

EXHIBIT F

US Bankruptcy Court - Delaware
In Re Leslie Controls

FINAL - October 4, 2010
Charles Mullin, Ph.D.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

CHAPTER 11

IN RE:

LESLIE CONTROLS, INC.,

Debtor.

DEPOSITION OF

Charles Mullin, Ph.D.

October 4, 2010

Washington, D.C.

Lead: John Dorsey, Esquire

Firm: Young Conaway

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1 Monday, October 4, 2008

2 Washington, D.C.

3 ---

4 Whereupon,

5 CHARLES MULLIN, PH.D.

6 1300 Eye Street, N.W. Washington, D.C.,

7 having been duly sworn, was examined and testifies

8 as follows:

9 - - - - -

10 EXAMINATION

11 - - - - -

12 EXAMINATION BY COUNSEL FOR LESLIE CONTROLS

13 BY MR. DORSEY:

14 **Q. Good morning, Dr. Mullin. We met a moment**
15 **ago. My name is John Dorsey. I represent the future**
16 **claims representative in the Leslie Controls**
17 **bankruptcy proceeding in the bankruptcy court in**
18 **Delaware, and we are here today to take your**
19 **deposition. I assume you've been deposed before; is**
20 **that correct?**

21 A. I have.

22 **Q. How many times?**

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1 A. Maybe somewhere around 15.

2 **Q. So you're familiar with how this works.**

3 **I'll be asking questions; you answer the questions.**

4 **If you don't understand a question that I ask, please**

5 **let me know, and I will rephrase it for you to try to**

6 **make it understandable. And if you need a break at**

7 **any time, let me know, and I'm happy to take a break.**

8 **I usually try to take one about every hour myself**

9 **anyway, just because everybody gets a little**

10 **blurry-eyed after a while.**

11 **When were first contacted, Dr. Mullin,**
12 **about providing an expert opinion in this case?**

13 A. Around a month ago. Maybe a little --

14 **Q. I'm sorry. Who contacted you?**

15 A. Leslie Davis.

16 **Q. And Ms. Davis is an attorney?**

17 A. Correct.

18 **Q. And do you know who Ms. Davis represents?**

19 A. The Century Insurance.

20 **Q. And what did she ask you when she**

21 **contacted you about giving an opinion in this case?**

22 A. The initial discussion was more just a

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1 description of some background on the case, and I was
2 asked to look at the claims data and see if I had an
3 opinion about what it's future liability may be.

4 **Q. Were you asked to provide any specific**
5 **types of opinions?**

6 A. Not at that juncture. It was more
7 open-ended. I normally don't offer opinions at the
8 beginning. I look at what's there first.

9 **Q. Did Ms. Davis tell you, though, what**
10 **opinion they were asking to you give, other than what**
11 **the potential future value of the -- or the value of**
12 **the future claims might be?**

13 A. Initially, it was to look at the data and
14 see what my thoughts were.

15 **Q. In that initial conversation, did you**
16 **speak with anyone other than Ms. Davis?**

17 A. No.

18 **Q. What information did you review then,**
19 **after you had that first conversation?**

20 A. I received a set of materials concerning
21 Leslie Controls. One of the -- probably the most
22 important was historical claims data. I think there

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1 were some other reviewed -- some of the filings. I
2 can't recall what all of them were titled, but some
3 of the filings related to the bankruptcy. Also
4 reviewed a number of the cases that had gone to trial
5 and looked at those outcomes specifically.

6 **Q. When you say cases to trial, are you**
7 **referring to cases against Leslie?**

8 A. Correct.

9 **Q. Who provided you with the information that**
10 **you reviewed?**

11 A. It was either provided to me from counsel,
12 or it would have been information that was publicly
13 available that I or someone on my staff collected.

14 **Q. What did Ms. Davis tell you about the**
15 **background in the case in that first conversation**
16 **that you had?**

17 A. I don't have a specific recollection. I
18 knew -- I knew about the case before I spoke with her
19 in very broad general terms, and I don't recall
20 exactly what she told me that I may not already have
21 been aware of.

22 **Q. After you reviewed the material that**

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1 **you've identified, what happened next? In terms of**
2 **your conversations with either Ms. Davis or anyone**
3 **else with regard to your opinion?**

4 A. I provided her with my initial impressions
5 and had a discussion about what, if any, future work
6 her client desired.

7 **Q. What did you tell her about your initial**
8 **impressions?**

9 A. My initial impressions were that Leslie
10 Controls was a relatively new defendant in the
11 asbestos litigation. It hadn't seen much liability
12 prior to 2000, or seen -- it had seen some
13 third-party actions and some other things, but hadn't
14 paid much indemnity at all in the underlying tort
15 cases prior to that. As a set of other companies
16 went bankrupt in the early 2000s, they appeared to
17 start to get named.

18 They seemed to be a company that followed
19 kind of a relatively classic pattern of a new
20 defendant in that as those new claims come in,
21 initially they start paying a fair amount of
22 indemnity, and then they build up their defenses, and

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1 as they build up those defenses, those play out in
2 the tort system. In the case of Leslie, it appeared
3 that those defenses were effective and that they were
4 winning the cases that were going to trial in
5 general. They were getting defense verdicts. Their
6 claim values had been declining in the recent years,
7 and their dismissal rate had been climbing. So I had
8 the impression of a defendant that had ramped up its
9 defenses, was defending successfully, and its
10 liabilities, if anything, appeared to be coming down
11 on a go-forward basis as opposed to trending up.

12 **Q. And after you provided your initial**
13 **impressions, were you asked to do anything further?**

14 A. I was eventually asked to prepare the
15 declaration that I subsequently filed.

16 **Q. Were you asked to provide any specific**
17 **types of opinions with regard to your initial**
18 **impressions?**

19 A. In the scope, as I think fairly laid out
20 in terms of the declaration itself, I wasn't asked to
21 give a particular opinion or conclusion. I was asked
22 to provide my opinions regarding the proposed trust

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1 distribution procedures, the average values in those,
2 the projected liabilities, future -- potential future
3 liabilities of Leslie Controls, and that's what I
4 did.

5 **Q. You mentioned the declaration that you**
6 **prepared. Did you prepare this yourself?**

7 A. I mean, I either directly prepared or
8 oversaw the preparation of everything that's in here,
9 so, I mean, I have a staff that assists me in my
10 first drafts of things if they have done analyses,
11 but I will always edit those to ensure that they
12 properly reflect my opinions.

13 **Q. And do you know whether in this particular**
14 **case you drafted the declaration yourself, or did**
15 **your staff draft all or portions of it initially and**
16 **then you reviewed it?**

17 A. It's a mixture throughout. So I drafted
18 -- I spent -- I can't tell you exactly how many
19 hours, but I spent a fair number of hours going
20 through either writing paragraphs from scratch myself
21 or editing the proposed text that others had provided
22 to me.

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1 **Q. Were there drafts of the report -- or**
2 **excuse me -- the declaration before this final**
3 **version that's been produced?**

4 A. I didn't type it as you see it here the
5 first time. I just had a Word file that I was
6 working in, so that file evolved through time.

7 **Q. You mentioned that there were edits to the**
8 **declaration as you were going through it over time.**
9 **Do those edits still exist, or were they overwritten?**

10 A. As best as I know, it's how computers
11 work. I mean, I had one Word file, and I'd keep
12 revising that one Word file and saving over it.

13 **Q. The portions of it that were written by**
14 **your staff, did they provide them to you**
15 **electronically or in hard copy?**

16 A. Those were -- typically, it's done just
17 within the same Word document. Somebody else would
18 be handed over control of the Word file, and they
19 would propose edits in that.

20 **Q. Is that Word file then emailed between the**
21 **people who were working on a particular declaration?**

22 A. No. We typically -- it's stored on our

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1 network drive, and people just go to that network
2 drive, and that way it's backed up in some sense if
3 you were to lose everything. That way it exists in a
4 secure framework for us, as opposed to sending it
5 over email.

6 **Q. Would someone who was working on the**
7 **draft, the portions that you didn't draft yourself**
8 **directly, would they email you to tell you they had**
9 **updated the declaration and you should go look at it?**

10 A. They may, and they may just drop by my
11 office and tell me.

12 **Q. Do you know whether there are any emails**
13 **between you and your staff regarding the work that**
14 **was done on the declaration?**

15 A. I'm sure there's a number of emails back
16 and forth. The gist of those would be scheduling, or
17 there may be a note that says I completed reviewing
18 the section you wanted me to review. There may be an
19 email of that nature. And, generally, emails
20 wouldn't contain any edits themselves.

21 **Q. Have you brought any copies of the emails**
22 **or any other documents with you today?**

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1 A. Sitting in front of me is a copy of the
2 declaration itself, but I haven't brought any emails.

3 MR. DORSEY: I would like to see the
4 emails that were sent between him and his staff
5 regarding the preparation of the declaration.

6 BY MR. DORSEY:

7 **Q. You mentioned that you have a Word file on**
8 **your system at work that would contain the document**
9 **that everybody just would go into and make edits to**
10 **as they were working on the declaration; is that**
11 **correct?**

12 A. Correct.

13 **Q. Is there a backup of your system every**
14 **night to back up the documents that are contained on**
15 **the -- on the system?**

16 A. I know that my IT department does backups.
17 I don't know the exact frequency or how long they are
18 preserved.

19 **Q. Is it possible then that there could be,**
20 **in the backups that are conducted, different versions**
21 **of the declaration as it was going through the**
22 **process of being edited?**

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1 A. It's possible.

2 **Q. I'd also like to see copies of any edits**
3 **for previous versions of the declaration that might**
4 **be on the system. As you were working on the**
5 **declaration, did you send copies of it to counsel?**

6 A. I think at some point there was a -- a
7 version sent to counsel.

8 **Q. Do you recall when that was?**

9 A. I don't recall the exact date. Probably a
10 day or two or so before it was filed.

11 **Q. And that would have been a Word version of**
12 **the document that you had been working on?**

13 A. It would either be a Word version or a PDF
14 version.

15 **Q. Were there edits made to the declaration**
16 **after you sent it to counsel?**

17 A. Yes.

18 **Q. I'd also ask to see then a copy of**
19 **whatever was sent to counsel prior to the filed**
20 **version. Did counsel provide any comments to you**
21 **about the report that you sent to them initially?**

22 A. Yes.

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1 **Q. What comments did they provide?**

2 A. Largely, grammatical in nature, so
3 rephrasing of a sentence, punctuation, proper
4 referencing on items was the gist of the feedback.

5 **Q. You say "largely." Were there other edits**
6 **that were more substantive?**

7 A. Not edits per se. I mean, there was a
8 discussion of the declaration, but there wasn't, you
9 know, an edit of a line item.

10 **Q. How were those edits transmitted to you?**
11 **Was it verbally or by email?**

12 A. I don't recall exactly how they arrived.
13 I mean, I don't -- it wasn't verbally to me, but it
14 may have been to somebody on my staff or it may have
15 been a -- you know, effectively a marked-up version.
16 I don't recall.

17 **Q. So it's possible there is either a**
18 **marked-up version or emails discussing edits counsel**
19 **was requesting that you make to the declaration?**

20 A. It's possible.

21 **Q. To the extent they exist, I would ask for**
22 **production of those emails. Other than the**

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1 **information that you reviewed that you've already**
2 **testified about in the initial documents that you**
3 **took a look at in the preparation of your**
4 **declaration, did you look at other documents in**
5 **preparing your opinions in this case? Other than the**
6 **ones you've already identified?**

7 A. I'm probably not going to recall all of
8 them as I sit here, but in general categories, I
9 reviewed some financial information related to Leslie
10 Controls. I reviewed some financial information of
11 companies that, in a loose sense, could be viewed as
12 comparables to them from an evaluation perspective.
13 There's not so much reviewed per se for this but
14 things that are in my general knowledge of things
15 that I am constantly aware of are, you know, the
16 evolving tort environment both with regard to, you
17 know, substantive developments potentially in the law
18 but also substantive developments in terms of
19 economic factors in that environment.

20 **Q. We'll go ahead and mark your declaration**
21 **as an exhibit.**

22 -----

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1 (Exhibit 1 marked.)

2 -----

3 BY MR. DORSEY:

4 Q. Attached to your declaration that has been
5 marked as Mullin Exhibit Number 1, there is a list of
6 materials that you considered in the preparation of
7 your opinion; is that -- is that correct?

8 A. There is.

9 Q. And that's Exhibit -- or attachment B to
10 your declaration? Correct?

11 A. Correct.

12 Q. And in addition to the list, there is some
13 additional copies of materials that are attached to
14 the back of that list; is that accurate?

15 A. Yes.

16 Q. Is this a comprehensive list of all of the
17 materials that you considered in the preparation of
18 your opinion?

19 A. It would be -- there's always a chance I
20 missed something, but the intent was for this to be a
21 comprehensive list of the things that I specifically
22 considered here. As I said, there's a broad array of

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1 knowledge that I would also put in there in terms of
2 knowledge about the bankruptcy trust system,
3 knowledge about the amount of funding in those trusts
4 and how that may affect the tort environment, and
5 knowledge of the legal environment in the different
6 states. I didn't try to, you know, give a complete
7 list of all of that knowledge that I possess that
8 does frame my opinions.

9 **Q. If you look to the documents that are**
10 **behind the list of materials that were considered,**
11 **the first is a spreadsheet that's captioned Leslie**
12 **valuation analysis. Is that correct?**

13 A. Correct.

14 **Q. And this is the valuation of Leslie**
15 **itself, as opposed to the claims against Leslie,**
16 **correct?**

17 A. Yes. That's the purpose of the -- these
18 working papers. Yes.

19 **Q. And what was the purpose of reviewing this**
20 **particular information with regard to your opinion in**
21 **the case?**

22 A. There's a section in my declaration, which

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1 I'll just turn to so I can make direct reference.
2 Really the section that's probably -- runs from about
3 paragraph 27 through paragraph 30 expresses opinions
4 concerning the Leslie and CIRCOR contributions
5 relative to the value of Leslie. So to quantify the
6 value of the contribution above the enterprise value
7 of an asbestos-free Leslie Controls was the purpose
8 of looking at that.

9 **Q. And then behind those two pages, there's**
10 **some additional spreadsheet-type information. Can**
11 **you tell me what this is?**

12 A. Yes. So after the first two pages?

13 **Q. Yes.**

14 A. Right. This is more the raw data as has
15 been publicly available concerning companies that one
16 may consider comparables to Leslie Controls. And so
17 that -- that's the raw data that feeds in on the
18 front page where it says Multiples Analysis on the
19 first Excel sheet and has various company names.

20 **Q. Okay.**

21 A. So it's characterizing those companies.

22 **Q. And why did you review this information in**

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1 **connection with your opinion?**

2 A. Again, it goes to the valuation of Leslie
3 Controls and -- which is a component of determining
4 what, if any, contribution CIRCOR was making above
5 and beyond the value of an asbestos-free Leslie
6 Controls.

7 **Q. Did you make that determination about the**
8 **value of Leslie and the comparable companies**
9 **yourself, or did somebody else on staff do that?**

10 A. I made the determination of my opinion,
11 which is that the value was probably not above its
12 liquidation value of 35 million, and I did that
13 through looking at both the financials of Leslie
14 directly and by looking at the comparable companies.

15 **Q. Do you have experience in valuing**
16 **companies?**

17 A. I have limited experience in that regard.

18 **Q. What experience do you have?**

19 A. I have my training in economics going back
20 and looking at valuing companies. I understand the
21 basic concepts of discounted cash flows and
22 enterprise value. And all I was really attempting to

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1 look at here is a company that averages less than two
2 million a year of profit, and asking the question of
3 if it averages less than two million a year in
4 profit, could it have an enterprise value in excess
5 of \$35 million, its stated liquidation value? I took
6 its liquidation value from the disclosure statements
7 as given. I didn't do my own analysis of that. And
8 the discount rate that would be necessary for it to
9 exceed 35 million would be incredibly low. So it's
10 really easy to come to the conclusion where the
11 numbers are very obvious that its enterprise value
12 doesn't exceed its liquidation value. So knowing
13 that, it gave me comfort that that's where all the
14 economic factors pointed.

15 **Q. Have you ever given an expert opinion**
16 **about the value of the company?**

17 A. What? No. And here I'm really saying
18 that it doesn't exceed its liquidation value. I'm
19 not stating what its value would be outside of
20 liquidation, outside of the fact that it appears to
21 be well below its liquidation value.

22 **Q. Going back to Exhibit B, if you go past**

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1 **the information regarding comparable companies,**
2 **there's another document, and at the top it says**
3 **Wilson Elser Moskowitz Edelman & Dicker. Do you see**
4 **that?**

5 A. Yes.

6 **Q. What is this document?**

7 A. This is a document that the most relevant
8 section from my perspective is really looking at the
9 subsection on California, but it's a document that
10 provides an overview of the legal environment and an
11 opinion on what the appellate court rulings mean and,
12 in that sense, leads into how that environment may
13 impact Leslie Controls, had it stayed in the tort
14 system.

15 **Q. Why was that important for you in**
16 **preparing your opinion in this case?**

17 A. Well, a core component of my opinion is
18 explicitly about what is the -- what would have been
19 the likely liability faced by Leslie Controls if it
20 had stayed in the tort system. In order to answer
21 that question, one has to look at the tort
22 environment as it -- both as it exists today, as it

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1 existed over the recent past, if you're going to use
2 their claims history in the recent past, and how that
3 is evolving or likely to move in the future. And if
4 you don't do that, you don't get a reliability
5 estimate. So you need to understand what that tort
6 environment is to come up with reliable forecasts.

7 **Q. Are you familiar with the Wilson Elser**
8 **firm?**

9 A. I'm not deeply familiar with them.

10 **Q. Have you ever worked with them before?**

11 A. Not to the best of my knowledge.

12 **Q. Has anyone at Bates White ever provided an**
13 **opinion on behalf of Wilson Elser?**

14 A. Not that I'm aware of.

15 **Q. Do you know what kind of work Wilson Elser**
16 **does?**

17 A. I may know -- in this section, it's
18 talking about their toxic tort and environmental
19 practice, but I don't know globally what the law firm
20 does.

21 **Q. Do you know whether they represent**
22 **plaintiffs in toxic tort cases or defendants?**

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1 A. I mean, its description is more consistent
2 with the defense posture in the national defense
3 platforms it's describing and looking at things, but
4 I don't know all of its history.

5 **Q. Other than this information provided by**
6 **Wilson Elser, did you look at any other source of**
7 **information about what the meaning of the opinions**
8 **that are referred to in these materials meant?**

9 A. I've read them -- I mean, I'm familiar
10 with the appellate rulings. I've reviewed them.
11 I've had discussions at any number of conferences
12 with both defense and plaintiff counsel at those
13 conferences, you know, about how these things may
14 impact the environment.

15 **Q. Do you have any legal training?**

16 A. I did not go to law school, if you mean by
17 formal legal training, in that sense, no.

18 **Q. Do you feel you have some expertise in the**
19 **law?**

20 A. A key component of what economists do
21 generally is incorporate different disciplines. I do
22 that pretty much every day when I look at asbestos

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1 liabilities. As I said earlier, you can't forecast
2 asbestos expenditures or even understand a company's
3 historical expenditures unless you understand that
4 legal environment in which those expenditures are
5 occurring. And so, across many disciplines, you
6 know, law being one of those, economists routinely
7 read the literature, get an understanding of it, and
8 incorporate that into the analysis. And I do that
9 every time I do -- look at potential future
10 expenditure for a company, and that's explicitly what
11 my expertise is in.

12 **Q. In reviewing the material about what's**
13 **going on in the tort system, did you -- other than**
14 **this Wilson Elser material that you've attached, did**
15 **you review any other materials?**

16 A. For California specifically, I've looked
17 at a number of the appellate rulings themselves and
18 with regard to equipment manufacturers.

19 **Q. And your basis for knowledge of the law**
20 **then is as your work in an economist in reviewing the**
21 **work done by other people with regard to what is**
22 **happening in the legal community; is that a fair**

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1 **statement?**

2 MS. DAVIS: Objection to form.

3 THE WITNESS: When you look at appellate
4 rulings, I mean there's -- I'm not going to -- I'm
5 not an attorney. I don't know what inferences
6 attorneys draw from them, but I know most of them
7 aren't that hard for a layperson to just read and
8 understand what the general meaning of the ruling is.
9 When you get a ruling that says an equipment
10 manufacturer isn't liable for something that was
11 specced or not specced, that was put on the outside
12 by somebody else, and prior to that ruling they were
13 potentially liable for it, it's very easy to know
14 that that means the scope of potential liabilities
15 for those equipment manufacturers has declined. And
16 that will create downward pressure on their future
17 expenditure. Then it becomes an empirical question
18 as to how much downward pressure. Does that cause
19 their expenditure to fall 1 percent, 5 percent, 20
20 percent, 50 percent? Those are empirical questions.
21 Attorneys don't know the answer to that when they
22 read an opinion. You know, that -- you go to the

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1 data, and you have to estimate that from data that
2 you go to quantification.

3 And that's really what I do. I go in, and
4 I look at the environment. I look at what's
5 changing, and then it becomes an empirical question
6 to quantify the likely impact of those changes or
7 potential changes on future expenditure.

8 **Q. But you know that two lawyers could look**
9 **at the same opinion and draw different conclusions**
10 **about what that opinion means, right?**

11 A. Correct.

12 **Q. Otherwise we don't have work.**

13 A. I have confidence you'd find something.

14 **Q. Going back to your opinion itself -- or**
15 **your declaration. The declaration basically is your**
16 **opinion in this case, correct?**

17 A. Correct.

18 **Q. And in the first paragraph, you say that**
19 **you were retained to, quote, "evaluate the potential**
20 **impact of the Leslie Controls, Inc., in parens**
21 **("Leslie") bankruptcy filing on Leslie's pending and**
22 **future asbestos bodily injury claims. Correct?**

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1 A. Correct.

2 **Q. And in doing that, you reviewed the**
3 **materials that we've already talked about, and -- and**
4 **then the rest of your report is the opinion itself**
5 **about how that interrelates, correct? Pending future**
6 **asbestos claims?**

7 A. The report speaks for itself, but that's a
8 characterization.

9 **Q. If you look at paragraph five of your**
10 **report, as I read this paragraph -- and correct me if**
11 **I'm wrong -- there are really three different**
12 **opinions that you're giving; is that a fair**
13 **statement?**

14 A. Like I said, there's -- there's numerous
15 things throughout here to -- I haven't gone through
16 the exercise of trying to put a count as to how many
17 opinions I have.

18 **Q. Well, if we go through this paragraph, as**
19 **I look at the three, one is the TDP values and**
20 **Leslie's liability estimate that form a basis of a**
21 **proposed prepackage plan of reorganization are**
22 **inconsistent with Leslie's recent tort experience.**

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1 **In particular, the trust envisions paying numerous**
2 **claims that would have been uncompensable in the tort**
3 **environment. Do you see that?**

4 A. I do.

5 **Q. I count that as opinion number one. You**
6 **then go on to say, further, the TDP proposes paying**
7 **compensable claims substantially more than they**
8 **likely would have received in the tort environment.**
9 **I'd say that's opinion number two. Is that fair?**

10 A. Like I said, I wrote it the way that I
11 would like to express my opinions. You can
12 characterize them as you like.

13 **Q. Okay. And then, three, although Leslie,**
14 **its parent CIRCOR, and other plan proponents have an**
15 **economic incentive to overstate the potential**
16 **asbestos liabilities, the resultant TDP figures do**
17 **not reflect Leslie's likely tort liability. Correct?**

18 A. That's what it says.

19 **Q. And then you say in paragraph six, each of**
20 **these opinions is described in more detail below. So**
21 **paragraph five contains the opinions, and then below**
22 **that is the support for your opinions, correct?**

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1 A. I mean, I would describe paragraph five as
2 stating at a -- in very broad brush strokes what the
3 opinions are, and underneath that it provides more
4 detail and subtlety to what those mean, which you
5 could call multiple opinions or you could just call
6 fleshing out what are these broad brush stroke
7 opinions up above.

8 **Q. If we then turn to paragraph number eight,**
9 **we are talking about Leslie's claims data and trial**
10 **history. And you state in the second sentence of**
11 **that paragraph, in each of the three years preceding**
12 **its bankruptcy filing, 70 to 80 percent of resolved**
13 **mesothelioma claims were dismissed without payment.**
14 **Do you see that?**

15 A. I do.

16 **Q. Do you know what the total value of the**
17 **claims that were paid for the remaining 20 to 30**
18 **percent over the -- over that three-year period?**

19 A. I don't recall the exact number. I don't
20 think that's contained explicitly in my declaration,
21 but probably somewhere -- 10 to \$20 million. I
22 forget the exact. Something in that -- more than 10,

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1 I believe, but probably less than 15.

2 **Q. And when you speak in terms of 10 to \$20**
3 **million, is that for settlements and verdicts?**

4 A. That's the amounts that were paid. I
5 believe so, as reflected in their claims data.

6 **Q. That doesn't include then the defense**
7 **costs for defending claims?**

8 A. No. It does not.

9 **Q. You go on in the next sentence to describe**
10 **the eight cases that were tried to completion, and**
11 **you note that there was one verdict against Leslie**
12 **that was reduced on appeal to \$355,000; is that**
13 **correct?**

14 A. Actually of the eight that were tried to
15 completion, seven were defense verdicts, and the one
16 was a plaintiff verdict reduced to 355,000.

17 **Q. And you note, though, in footnote number**
18 **three that there was another action that resulted in**
19 **a plaintiff verdict, correct?**

20 A. I don't know the technical -- I mean, I
21 know the initial verdict was a plaintiff verdict, and
22 then that was I believe sent back to be retried. So

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1 I don't know if that's technically still a plaintiff
2 verdict, or if that is now -- you know, they're just
3 starting over from scratch and as yet to be
4 determined. I would view that as yet to be
5 determined as to whether -- if the proper rules and
6 everything was followed as the appellate courts
7 thought it should be, we don't know what the outcome
8 is yet.

9 **Q. So when you said eight cases with one that**
10 **resulted in a plaintiff's verdict, does that include**
11 **or exclude the one that's referred to in footnote**
12 **number three?**

13 A. I view that one as not having been -- it
14 isn't complete. The ultimate resolution remains
15 unknown. We still don't know whether it will
16 ultimately be a defense or a plaintiff verdict.

17 **Q. Do you know the amount of the verdict that**
18 **was entered by the jury in that case?**

19 A. I've seen it, but I don't recall.

20 **Q. You state in footnote three that on appeal**
21 **this matter was remanded for a new trial which will**
22 **no longer occur due to the bankruptcy filing. Do you**

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1 **see that?**

2 A. I do.

3 **Q. Do you know whether there was a subsequent**
4 **appeal from the first appeal that was entered in that**
5 **case?**

6 A. I don't recall.

7 **Q. The opinions that you reviewed in**
8 **connection with preparation of your report were**
9 **from -- they were all from California, correct?**

10 A. I focused on California. That's correct.

11 **Q. And what level of appeal court did those**
12 **opinions all come from; do you know?**

13 A. I believe they are the -- I believe they
14 are all the appellate court.

15 **Q. Is there more than one level of appellate**
16 **court in California?**

17 A. There is a Supreme Court. So there's a
18 higher court above that.

19 **Q. And none of the opinions that you reviewed**
20 **were from the California Supreme Court, correct?**

21 A. That's correct.

22 **Q. Going up to paragraph number eight, you**

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1 **talk about the one verdict that was entered, and you**
2 **state in the last sentence of that paragraph, thus,**
3 **Leslie has paid on average less than \$50,000 per**
4 **verdict. Do you see that?**

5 A. Yes, I do.

6 **Q. So why do you include the -- when you're**
7 **talking about average verdicts, why do you include**
8 **those that resulted in a defense verdict?**

9 A. It's still a verdict. I view what I think
10 of the litigation environment that both the
11 plaintiffs' attorneys and defendant companies face
12 when they make decisions about whether or not they
13 are going to try a case. A plaintiff's attorney is
14 going to look at their economic returns doing so, as
15 is a defense, the defense side. As they look at
16 that, both the probability that they get a plaintiff
17 verdict and the award that they may attain once they
18 get a plaintiff verdict are both relevant factors.
19 So what we've seen is, over the course of eight
20 cases, an average return on trying the case from the
21 plaintiff's side of under \$50,000 for the effort of
22 trying the case, which is a low rate of return in

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1 asbestos litigation for trying cases.

2 **Q. But that doesn't include the defense**
3 **costs, correct?**

4 A. It's the indemnity side.

5 **Q. And do you know how much Leslie paid in**
6 **defense costs to take those eight cases to trial?**

7 A. I don't recall the exact number. It was a
8 fair amount of money.

9 **Q. Is that also something that attorneys**
10 **would take into account in determining the risk**
11 **factors on going forward with a trial, what the**
12 **defense costs are going to be?**

13 A. In my experience of working with different
14 companies, companies take very different viewpoints
15 on that. Some are much more willing to incur defense
16 costs to avoid indemnity and set precedents and
17 others aren't.

18 **Q. But in determining the risk of going**
19 **forward -- you were talking about the risks of going**
20 **to trial and trying the case and that the average**
21 **payout is less than \$50,000 per year. Wouldn't the**
22 **attorneys who are advising the companies say a**

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1 **potential risk of a verdict is \$50,000, but in**
2 **addition to that, you have to consider what was spent**
3 **in defense costs to defend those cases?**

4 A. What I think of the analysis -- I don't
5 think of defense cost so much as a risk. They are
6 costs. I don't think verdicts are volatile. You
7 might get a defense verdict and pay zero, or you
8 might get a plaintiff verdict and pay \$355,000.
9 There's a lot of uncertainty and hence risk as to
10 what a jury may do. I don't think there's nearly as
11 much uncertainty of risk as to what your defense bill
12 for trial is going to be. It's a cost. And like all
13 costs -- does a company take its costs into account?
14 They should. I don't know what Leslie Controls did.
15 I haven't had an opportunity to talk to them, but
16 they should take that cost into account in making
17 their decisions.

18 **Q. And that makes sense because if you were**
19 **going to take a case to trial and it was going to**
20 **cost you a million dollars in attorney's fees and you**
21 **have a risk of a \$50,000 verdict, but you could**
22 **settle the case for \$100,000, that might be a good**

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1 **deal, right?**

2 A. Again, this depends on where you are in
3 your litigation. If -- and I think what asbestos
4 litigation has taught many defendants is that if you
5 simply settle to avoid defense costs, you'll just get
6 more and more claims. And if you have a low exposure
7 profile like Leslie with what appear to be very few
8 compensable claims against you, establishing that
9 precedent in the tort system might have a lot of
10 long-run value, which their actions seems to be more
11 the route that they took. They did try nine cases. .
12 They did make the decision to set precedents and not
13 just settle for \$100,000 less than it would have cost
14 them to try the case. And that contains the number
15 of future claims you're going to get because the
16 plaintiffs' bar has set costs too of trying the case,
17 and if they know that you'll fight back and resist,
18 they're less likely to try a case against you.

19 So it's -- there is an interaction between
20 the two sides, and you can't look at it only from one
21 side. If you viewed it simply as a one-sided
22 equation, no case should ever go to trial because the

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1 defendant has costs of litigating, the plaintiff has
2 costs of litigating, and both should be willing -- I
3 mean, your logic -- if I flip it around, if I have a
4 plaintiff who says I expect to get \$100,000 if I try
5 this case, but I have \$150,000 in trial costs,
6 therefore they should be willing to accept zero
7 payment and walk away. And at the same time, you may
8 say, oh, it has a value of \$100,000 and there's
9 \$150,000 in trial costs for the defendant, your logic
10 says the defendant should be able to settle for
11 250,000 or less, and so now I have one side willing
12 to take zero and the other side willing to pay 250.
13 That's not how people negotiate, and that's not how
14 precedents are set. So both of those logics are
15 flawed.

16 **Q. So, in your view, it would be illogical to**
17 **take into account the defense costs in determining**
18 **the long-term risks of litigating cases, as opposed**
19 **to filing for bankruptcy and getting an 524(g)**
20 **injunction?**

21 A. No. That's not what I said.

22 **Q. Okay. How would you approach that when**

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1 **you're considering whether or not you should take**
2 **into account defense costs in determining long-term**
3 **risks and making a decision then about whether you**
4 **should file for bankruptcy and seek a 524(g)**
5 **injunction?**

6 A. So -- I'm a little unclear on exactly what
7 question you're asking me.

8 **Q. Let me try and rephrase it for you. In**
9 **your experience, when companies are deciding whether**
10 **or not to file for bankruptcy and seek a 524(g)**
11 **injunction when they have asbestos liabilities, do**
12 **those companies take into account in addition to what**
13 **the potential verdicts might about, if they had to**
14 **try a case, the cost of defending those cases in the**
15 **tort system?**

16 A. I think it is a business decision. They
17 would take into account all costs associated with it.
18 So I think they would take into account their defense
19 costs. I think they'd take into account their
20 capital financing costs. I think they'd take into
21 account overhang on their stock price. I think
22 there's a whole slew of costs that go into the

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1 business decision as to what you should -- whether or
2 not that's a good business choice for CIRCOR or
3 Leslie or any other defendant.

4 **Q. Now, you talked about how Leslie took -- I**
5 **think we have a little bit of an inconsistency. I**
6 **think in your last answer. Not this past one but**
7 **going back a little farther, you said they took nine**
8 **cases to trial, but it's really eight cases, correct?**

9 A. My understanding is that there were eight
10 cases that have gone to trial through completion, so
11 the final outcome is eight. There's a ninth case
12 that went to trial, that initially had a plaintiff
13 verdict which was overturned on appeal, and therefore
14 we don't know the final outcome. So I think there's
15 nine cases that I'm aware of that have gone to trial,
16 and eight of those we know the outcome of, one we
17 don't know the outcome of.

18 **Q. I was confused about what you meant in**
19 **paragraph eight about the eight cases, whether it**
20 **included that case that was included in footnote**
21 **three. But you've clarified that.**

22 A. I've excluded that one --

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1 **Q. Okay.**

2 A. -- because it's not completed.

3 **Q. Okay. In addition to those eight cases**
4 **that they took to trial, they also settled a number**
5 **of cases, didn't they?**

6 A. Yes. They did. Numerous settled cases.

7 **Q. In the eight cases that they tried, do you**
8 **know when those cases were initially filed against**
9 **Leslie?**

10 A. It's in the claims data, but I don't
11 recall the dates.

12 **Q. Turning to page 4 of your declaration,**
13 **there's a chart that lists by year filed the number**
14 **of mesothelioma claims, lung cancer claims, other**
15 **cancer claims, and nonmalignant or unknown claims,**
16 **correct?**

17 A. Correct.

18 **Q. And then the total column for all claims**
19 **filed in any particular year, correct?**

20 A. Correct.

21 **Q. And you go -- in paragraph 11, you state,**
22 **starting in 2008, law firms that ultimately comprised**

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1 **the members of the ad hoc committee and then**
2 **subsequently other plaintiff law firms appear to have**
3 **begun dumping their claims inventory on Leslie. Do**
4 **you see that?**

5 A. I do.

6 **Q. What's your basis for stating that it**
7 **appears that these firms began dumping their**
8 **inventory of cases on Leslie?**

9 A. Well, I go on to define more specifically
10 what I mean by that, I think, in the next sentence,
11 which states that, in other words, once those firms
12 establish that Leslie was a potential source of
13 compensation, they filed a large portion of their
14 claims inventory against Leslie. What you see in the
15 data is you see more claims being filed that were
16 diagnosed multiple years in the past. Initially, the
17 filings are almost always -- like the filing in 2004
18 was almost always a claimant who was diagnosed with
19 mesothelioma in 2004 or maybe 2003, but they are very
20 close in time. As you move forward in time, you see
21 a larger and larger fraction of the claimants with
22 diagnosis dates reaching back three, four, five, six

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1 years into the past, which is indicative of a claim
2 that's not in its initial pass through the tort
3 system.

4 You also see it in the resolutions.

5 Empirically, you can tell that as the claim filings
6 increased and went from the small numbers in the
7 early part of the decade up closer to 300, 400 claims
8 in the latter part of the decade, that the dismissal
9 rates rise, the average settlement value falls, even
10 among those that -- so fewer of them are paid, and
11 the ones that are paid are paid less per claim.
12 These are all things that are very consistent with a
13 weaker inventory of claims with regard to the
14 strength of the case against Leslie.

15 So all the factors point to -- that the
16 initial batch of claims that came in were the cases
17 that have the strongest connection to Leslie and face
18 the greatest litigation risk, and as time moved
19 forward, that population of claimants expanded to
20 those that had a much weaker a nexus, if any, to
21 Leslie Controls.

22 **Q. Well, if we look at the chart, how many of**

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1 **the 392 cases filed in 2009 were cases that had a**
2 **diagnosis farther back than three or four years?**

3 A. I don't know the exact number. In other
4 words, I was looking at -- it I forget if I was
5 looking at '08 or '09, but initially, as I said, they
6 were almost within the same year or one year before,
7 and through that time that grew to about 25 percent
8 of the claims being older than the year before. So
9 they'd be two calendar years plus back when initially
10 you saw almost no cases of that nature.

11 **Q. Now, you go on in paragraph 12 to talk**
12 **about how in recent years the percentage of resolved**
13 **claims the company has paid has fallen from about 40**
14 **percent to 25 percent. Do you see that?**

15 A. Correct.

16 **Q. If you look at -- and you're going based**
17 **upon claims that resolved beginning in 2008. So if**
18 **we look at your chart on page 4, there were a hundred**
19 **-- 751 cases total filed against Leslie during that**
20 **year of 2008, correct?**

21 A. Yes.

22 **Q. And if you turn to the next page, this is**

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1 **a chart that lays out your -- your view on the number**
2 **of cases resolved versus number of cases paid, and**
3 **then the payment rate and dismissal rate. Is that**
4 **accurate?**

5 A. This is only looking at mesothelioma
6 claims.

7 **Q. Right. And if we look at 2008, there were**
8 **186 mesothelioma claims resolved in 2008, correct?**

9 A. Correct.

10 **Q. How many of those 186 claims were filed in**
11 **2008?**

12 A. I don't have that number, as I sit here.
13 I could cross-tab that in the data, but I don't know
14 the number right now.

15 **Q. Did you look at that to see how many were**
16 **filed sometime prior to 2008?**

17 A. I looked generally, and I looked at
18 clearly as you -- the big change, when you look at
19 this table, is that the payment rates in 2005, 2006
20 and 2007 are sitting at about 40 percent. It's 39,
21 38, 40 percent over three years. 2008, 2009, 2010
22 it's averaging about 25 percent. The majority of the

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1 claims that were resolved in -- really all the claims
2 resolved in 2007 and earlier were clearly filed in
3 2007 and earlier. And the majority of the claims
4 that were resolved in 2008 to 2010 were claims that
5 were filed much more recently. So the trend is there
6 in the data. You know, would that eventually bottom
7 out even lower? And 2010 is indicative that, you
8 know, that affect may not have fully fleshed out yet,
9 and you may see that, you know, when you get more
10 like 400 claims filed, like in 2009, that the payment
11 rate may be 20 percent. It may be 15 percent. We
12 haven't seen that completely play out yet.

13 **Q. But as you sit here today, you can't tell**
14 **me how many of the claims that were resolved in 2008**
15 **were actually filed in 2008 as opposed to 2007 or**
16 **2006 or 2005?**

17 A. I can't -- I don't recall the exact
18 numbers.

19 **Q. And when those claims are resolved, when**
20 **you say they are resolved, what does that mean?**

21 A. They are -- I didn't do an independent
22 audit of the data provided by Leslie concerning their

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1 claims history. I took that as given. So resolved
2 means that, in the data that Leslie provided, it is
3 indicated that it's either dismissed with no payment
4 or that it's been settled for a payment, and there is
5 an amount of payment specified. Those are resolved.
6 It's no longer pending or open.

7 **Q. So in 2008 in your chart on page 5, when**
8 **you say 75 percent dismissal rate, that would mean 75**
9 **percent of the cases resolved in 2008 resulted in the**
10 **case being dismissed without payment?**

11 A. Correct.

12 **Q. And how long does it normally take in your**
13 **experience in the tort system to get a case dismissed**
14 **once it's filed?**

15 A. It varies. There's no one answer to that.
16 It varies by jurisdiction. It varies by defendant.
17 It varies by defense strategy. And it can even vary
18 by the date of the plaintiff filing.

19 **Q. Do you have a range of how long it takes,**
20 **based on those variables?**

21 A. California, particularly for -- is a
22 relatively fast jurisdiction typically. Plaintiffs

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1 can get trial dates relatively quickly. So the
2 majority of cases tend to resolve within, you know, a
3 year, two years of filing.

4 **Q. And then if it takes a year or two years,**
5 **it's safe to say that the cases that were resolved in**
6 **2008 wouldn't have been filed in 2008. It takes a**
7 **year or two years?**

8 A. It's within that. There's cases that are
9 filed and I've seen defendants -- I mean, a case that
10 was filed in, you know, April of 2008 may very well
11 have resolved against a number of defendants within
12 2008 in California. It's going to depend on what its
13 trial date is and the positions the various parties
14 take.

15 **Q. But you don't know that information?**

16 A. I know it's not uncommon in California. I
17 can't give you an exact date. If you filed in, you
18 know, December of 2008, you probably didn't resolve
19 with anybody in 2008, but if you filed in January,
20 you probably resolved with a number of defendants in
21 2008.

22 **Q. Do you know what Leslie spent in defense**

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1 **costs in each of the years 2008 and 2009?**

2 A. I don't recall the exact numbers. They're
3 spending a little bit more on defense than they're
4 spending on indemnity on average.

5 **Q. Did you include 2010 in your analysis of**
6 **the potential future claims value in this -- in this**
7 **case?**

8 A. I considered the data. I mean, as I --
9 when I look at it, I provide a range that I think
10 it's less than, and I explain why I think it's less
11 than that range. So part of what explains the
12 variation in that range is how much weight you give
13 to different periods of time. So there's a question
14 we just talked about, a bit about the calibration
15 period. So do you want to say that 2010 is
16 representative of the future or not in some capacity?
17 Do you want to say that, because it was close to the
18 bankruptcy filing, in some way it's not
19 representative and exclude it? I've looked at
20 different calibration windows, so in some scenarios
21 or some of the extrapolations I've looked at, it's
22 included. In other ones, it's not.

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1 **Q. How do you do those various extrapolations**
2 **based on the variables?**

3 A. It's really what part of the settlement
4 history you want to look at. So when you're doing an
5 extrapolation, you're fundamentally saying the
6 ultimate question is how many future compensable
7 claims are there going to be by year, and how much
8 will they get paid? But there's components that go
9 into that in terms of you usually start with, how
10 many claims are going to be filed against them?
11 Among those, how many of those will get dismissed
12 without payment versus will be settled for payment?
13 So when you look at that, you can choose a set of
14 years as what you think is representative for how
15 many claims they are going to receive and match that
16 up with what you think is the appropriate payment
17 rate for those years and match that up with what you
18 think is the appropriate average settlement value.

19 And there's an element of keeping your
20 analysis consistent as you go across those pieces.
21 You wouldn't want to take one set of years for your
22 filing rate and a totally different set of years for

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1 your payment rate, but you're looking at different
2 combinations and seeing how sensitive is the answer
3 to the assumptions you're invoking.

4 **Q. When you do that analysis and you put in**
5 **and take out certain variables, do you prepare a**
6 **document that shows what the results of that analysis**
7 **is?**

8 A. I mean, I do it interactively, so I look
9 at it and I see the outcome, and then I look at
10 another scenario and I see what that outcome would
11 be.

12 **Q. You don't print out a copy of it once you**
13 **see what the results are going to be?**

14 A. No. I could replicate it very easily, but
15 I don't print out a copy. It's a matter of how I set
16 scenarios.

17 **Q. And so someone who wanted to repeat what**
18 **you had done wouldn't be able to do that by the**
19 **information we had in front of us, could they?**

20 A. Well, they have all the underlying data to
21 do it, and we talk about using different calibration
22 periods and how sensitive it is to that, but I didn't

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1 specify or say a particular scenario is the one. I
2 have more looked at it across all of them to come to
3 a conclusion that -- you know, kind of a range if you
4 were to keep a static tort environment. So if you
5 ignore the fact that they have been winning their
6 trial verdicts and that there's tens of billions of
7 dollars coming on line in trusts and other factors
8 that should create downward pressure, if you ignore
9 all of those factors and you just did an
10 extrapolation assuming that the tort environment of,
11 you know, the last two to four years looking at
12 different calibration windows within that, you really
13 can't get a number above 90 million, that falls
14 between 60 and 90, is that range, and that range
15 overstates the likely outcome because it's ignoring a
16 bunch of factors that are creating downward pressure.

17 **Q. My question was if someone wanted to**
18 **re-create the calibrations that you've performed in**
19 **order to come to your conclusions about what the**
20 **value of the future claims are based on the**
21 **information contained in your declaration and the**
22 **attachments to your declarations, they wouldn't be**

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1 **able to do that, would they?**

2 A. They could. They can test my opinions
3 based on the information that's in here. The
4 information that's in here -- the fact that I combine
5 them in different ways -- whether I'm doing that in
6 my head, whether I'm doing that on a computer doesn't
7 really matter. The relevant information is all in
8 here. It talks about what the dismissal rates are.
9 It talks about how many claims they are going to get
10 and how many of those are going to get paid. It
11 talks about the justification for why I feel like the
12 claim values are going to be in a certain range for
13 the ones that are going to get paid. All the
14 components are there, and they can test the veracity
15 of any one of those components at will with the
16 claims data.

17 I'm not relying on any one scenario.
18 That's just how I get an understanding of the data.
19 That's my process of developing my understanding and
20 my opinion. That's not the opinion itself.

21 **Q. But someone outside wouldn't know which**
22 **variables you plugged in for which calibrations in**

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1 **order to re-create and determine whether your**
2 **calibrations were accurate, could they?**

3 A. I -- I'm not presented a calibration here.
4 I'm presenting a range based on my understanding of
5 their data based on the component pieces that are
6 explained here. So I think -- I think we're talking
7 past each other a little bit, but I don't have an
8 opinion on a scenario. I have an opinion about what
9 their ultimate liability would have been, had they
10 stayed in the sort system, and the foundation of that
11 is all laid out in the declaration. The fact that
12 I've run lots of queries on the data, I've gotten to
13 know their claims data and I understand it, that's
14 just part of the foundational work I do as an expert
15 to get towards forming that opinion, and any other
16 expert, I presume, would spend their own time getting
17 to understand the data and understanding what drives
18 their liability and come to an opinion of whether
19 they agreed or disagreed with me.

20 **Q. Well, let's look at paragraph 20 of your**
21 **declaration. In here, you say, in preparing the**
22 **extrapolation scenarios which were based on Leslie's**

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1 **recent tort history, I evaluated several different**
2 **calibration windows, that is to say, I evaluated the**
3 **impact of using only certain portions of Leslie's**
4 **recent tort history as a basis for the**
5 **extrapolations. Do you see that?**

6 A. Correct.

7 **Q. But it doesn't say what those**
8 **extrapolation scenarios are, correct?**

9 A. No. They're not particularly relevant to
10 what I'm saying in the paragraph. That's correct.

11 **Q. And why are they not relevant?**

12 A. The purpose of this paragraph is the
13 statement that what goes on next, which is the
14 calibration window, doesn't really affect the answer.
15 It's not real sensitive. I didn't pick one. I don't
16 -- I didn't go out and create an opinion about which
17 calibration window is right. What I did is I looked
18 at it, and I said the choice of calibration window
19 really doesn't matter. Whether you use the last four
20 years, you use only years three and four in the past,
21 only the most recent two, I take a three-year window
22 in there. I get basically the same answer. The data

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1 is stable. That's what's important. What's
2 important is that, as you look over the last four
3 years, there's some relative stability. What's
4 happening is there's more claims coming in. The
5 dismissal rate is going up. The average payment
6 amount is going down. And the number of core kind of
7 claims that are driving the liability really isn't
8 changing. And so that portion of it's relatively
9 stable of what's going on. And that's why it doesn't
10 really matter as you move back and forth. So what
11 this is really telling you is the calibration window
12 isn't particularly relevant to the analysis.

13 Sometimes it is. There's other defendants
14 where their data, depending on what you pick, makes a
15 really big difference. This one doesn't. That's
16 something any other expert could go assess and
17 come -- whether they agree or disagree that it's not
18 sensitive to that.

19 **Q. Well, let me ask you this: What did you**
20 **determine the potential future claims were against**
21 **Leslie in terms of dollar amount?**

22 A. What I did -- I really had a more limited

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1 opinion than that. What I did is I came to the
2 conclusion that it's likely less than the 60 to 90
3 million. So I said if you assume -- which is really
4 what's in paragraph 15 and 16. If you assume a
5 static tort environment, so you ignore the receipt
6 changes and the foreseeable future changes that are
7 going to create downward pressure and should lower
8 Leslie's liabilities, if you set all that so the side
9 and pretend none of that exists, and so you take the
10 last four years and you say I'm going to assume the
11 last four years is perfectly representative of what
12 the future is going to look like for Leslie Controls,
13 depending exactly how you want to play with that
14 data, you can get a number as low as 60 million or as
15 high as 90 million in nominal terms as to the money
16 that's going to be paid. That's what's -- that's
17 what you can do. And, you know, that's going to be
18 too high because you're ignoring all these factors
19 that are creating downward pressure.

20 That's the extent of what my opinion was
21 there. I explained in some subsequent paragraphs
22 what assumptions you need to make to get at the high

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1 end of that range versus what assumptions you need to
2 make to get at the low end of that range. And so
3 those are explained really in -- I think paragraphs
4 18 and 19 explain kind of what drives some of that
5 variability, but that's the extent of the opinion.

6 I didn't go through the exercise of
7 quantifying how much of an impact the downward
8 pressure may have on Leslie of the fact that they
9 have been winning at trial and the other changes that
10 are coming in the tort environment.

11 **Q. Why didn't you do that?**

12 A. It wasn't necessary. I mean, 60 to 90
13 million, what's being shown in the TDP -- I don't
14 need to do that to show that the TDP values are
15 unreasonable in my opinion. When I look at the TDP
16 values, they average a little bit more than \$100,000
17 per mesothelioma claim, and I compare that to a
18 history that, for the last three years, has been
19 trending down. Its high-water mark was about 80,000.
20 It was closer to 50,000 in 2010, but if I look at any
21 two-year average, it's hard to make it break 70,000,
22 and it's been coming down. And I look at that along

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1 with the fact that what's going on in the tort
2 environment should be creating more downward
3 pressure, and I don't see any justification for an
4 average value in a trust that exceeds the historical
5 experience. If anything, it should be lower, but
6 definitely it shouldn't exceed. So I didn't need to
7 do more work than that to determine that the 100,000
8 dollar average value in the trust, which is really
9 the weighted average of the two values that the trust
10 provides, but when you -- I don't need to do more
11 work to determine that that's an unreasonable value.

12 **Q. Did you take into account the payment**
13 **percentage on the TDPs?**

14 A. The payment percentage -- I mean, that's
15 an internal number in the trust. When you say take
16 into account, for what purpose?

17 **Q. To determine whether what's going to be**
18 **paid to claimants under the trust is a reasonable**
19 **amount.**

20 A. I guess this depends what purpose you're
21 liking at. I'm looking at the liquidated values, and
22 I'm saying the liquidated values do not represent the

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1 tort liability that Leslie would have faced. Now, if
2 you're going to ask once you take 40 percent of the
3 liquidated values, would those represent the tort
4 liability that might have been faced for compensable
5 claims, it might very well. It might even be too low
6 for some claims. But the TDP -- that's not the
7 question I was asked to look at. I was asked to look
8 at the liquidated numbers, and on the liquidated
9 values, those are unreasonably high.

10 **Q. Who asked you to look at the liquidated**
11 **values?**

12 A. That's what I understood is my scope of
13 work as I was looking at the reasonableness of the
14 TDP. As the payment percentage moves through time,
15 the liquidated values are presumably supposed to
16 represent what the indemnity payments of Leslie would
17 have been in the tort system.

18 **Q. But did somebody tell you specifically**
19 **only look at the liquidation values; don't look at**
20 **the payment percentage values?**

21 A. No. No one said that to me specifically.

22 **Q. And when you say liquidation value, what**

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1 **do you mean by that?**

2 A. The face value of the claim as processed
3 by the -- under the trust distribution procedures.

4 **Q. Did you discuss with counsel why it was --**
5 **why you were only looking at liquidation value, as**
6 **opposed to TDP value? Or payment percentage values,**
7 **I should say?**

8 A. No.

9 **Q. When you indicated earlier that in your --**
10 **in many coming up with the 60 to \$90 million range,**
11 **you looked at the last four years of claims history;**
12 **is that correct?**

13 A. I mean, I looked at in totality. I think
14 reaching further back wouldn't have been appropriate.

15 **Q. And when you say you looked at the last**
16 **four years, does that include 2010?**

17 A. That's in the last four years. Yes.

18 **Q. Did you take into account the fact that**
19 **the debtor filed for bankruptcy in July of 2010,**
20 **which would have stopped any claims being filed**
21 **against it?**

22 A. Yes.

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1 **Q. How did you do that?**

2 A. So, to me, you need to understand some
3 things. There's nothing magical about calendar
4 years. So time -- every day is a day. So they have
5 claims data through a given day, and the fact that
6 it's a partial day makes no difference in the
7 analysis. It's -- if it's a shorter year, I actually
8 do things typically in 12-month windows because there
9 is some seasonality actually in asbestos litigation.
10 So it's good to look in 12-month windows. So I
11 typically look in 12-month windows for the most
12 current data to the data reaching back. So I'll look
13 four years that date back from the filing date. I've
14 also looked at it in calendar years here because
15 that's just what most people naturally -- that's kind
16 of how they are used to seeing it. So I'll look at
17 it that way as well.

18 **Q. Well, to come up with the 60 to \$90**
19 **million range, did you look at calendar year, or did**
20 **you look at 12 months beginning right before the**
21 **bankruptcy filing?**

22 A. I looked at the 48 months preceding. I

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1 also looked at the three and a half, in essence,
2 calendar years preceding.

3 **Q. Did you also take -- let me strike that.**

4 **Do you know when the members of the ad hoc**
5 **committee first began negotiating with Leslie about a**
6 **possible 524(g) trust?**

7 A. No. The only data I recall seeing is when
8 they actually formed the committee. Presumably there
9 were conversations that predated the forming of the
10 committee, and I don't know when those occurred or
11 how extensive they were.

12 **Q. And are you aware that the members of the**
13 **ad hoc committee indicated that they would not file**
14 **any further claims against Leslie while they were**
15 **negotiating in the prepetition period?**

16 A. I am aware.

17 **Q. Did you take that into account in your**
18 **calibrations for determining what the potential**
19 **claims would have been in 2010?**

20 A. Yes.

21 **Q. How did you do that?**

22 A. As I said, I've done this where I've

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1 altered -- so I've taken the calibration period where
2 I've excluded the last 12 months. I've looked at the
3 calibration period. If I exclude the last 18 or 36,
4 or 18 or 24 months, the most recent. And I used a
5 little bit older data before those agreements were in
6 place. So that's really the point of where you
7 referenced paragraph 20. It's just not that
8 sensitive. The answer which -- how you treat these
9 different periods of time isn't what drives the
10 answer.

11 **Q. I'm going to take a break in a minute, but**
12 **I just want to ask a couple more questions.**

13 **So is it your opinion that the 60 to \$90**
14 **million range is a reasonable range for the value of**
15 **future claims against Leslie Controls?**

16 A. No. It overstates.

17 **Q. Okay. And we'll come back and talk about**
18 **that. Let's take a break.**

19 **(Recess.)**

20 **BY MR. DORSEY:**

21 **Q. Dr. Mullin, you indicated that it's your**
22 **belief that the 60 to \$90 million simple**

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1 **extrapolation of historical tort information from**
2 **Leslie on the value of future claims is not --**
3 **overstates, is that correct?**

4 A. I believe it's substantially more likely
5 to overstate than to understate. That's correct.

6 **Q. And I believe you testified earlier,**
7 **correct me if I'm wrong, that you did not try to**
8 **quantify to what extent it may overstate the claim**
9 **system or the potential future claims?**

10 A. No. I didn't try to put forward an
11 explicit quantification.

12 **Q. And if we look at paragraph 15 of your**
13 **report, you indicate the reasons why you believe that**
14 **the 60 to \$90 million figure might be overstated, is**
15 **that correct?**

16 A. Correct. Those are four factors I've
17 listed.

18 **Q. Are there others other than those four?**

19 A. The others I think more are -- there is
20 other factors that affect it. There is a reason the
21 range was 60 to 90 million. For example, if you
22 control for the fact that through time, the typical

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1 mesothelioma claimant gets older, older claimants
2 typically recover less than younger claimants. And
3 if you control for that factor, you're more likely to
4 be at the 60 end of the 60 to 90. And if you don't
5 control to that and think values are independent of
6 age, you get closer to the higher end.

7 So there are other factors that matter
8 that were in those scenarios that were discussed.
9 These are the four factors that I assumed would have
10 no impact for the sake of producing the 60 to \$90
11 million range, but in reality, those four factors all
12 create downward pressure which should lead to a
13 realized number below that range.

14 **Q. Well, let's walk through those four that**
15 **you have listed here. The first is Leslie's average**
16 **settlement value has been trending down over the past**
17 **three years, correct?**

18 A. Correct.

19 **Q. And we've talked about that already. Over**
20 **that same three-year period, what has happened to**
21 **Leslie's defense costs?**

22 A. I don't recall the exact numbers. They

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1 are in the data that was provided to me.

2 **Q. Are they trending up or trending down?**

3 A. I recall that they are slightly more than
4 indemnities, so my guess is given the number of
5 resolved claims has gone up, that they -- I believe
6 they trended up a bit in that period.

7 **Q. You say the defense costs are slightly**
8 **more than the indemnity costs?**

9 A. Overall. If you look at total indemnity
10 versus total defense, I think there is in rough
11 numbers, my recollection is there is about 20 million
12 of historical indemnity payments and about 25 million
13 of historical defense payments.

14 **Q. Let's take a look at a document.**

15 -----

16 (Exhibit 2 marked.)

17 -----

18 **BY MR. DORSEY:**

19 **Q. Dr. Mullin, you've been handed what's been**
20 **marked as Mullin Exhibit 2 and this is the first**
21 **amended disclosure statement filed by Leslie Controls**
22 **in the bankruptcy claim filed in Delaware?**

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1 A. Yes.

2 **Q. You looked at this in connection with your**
3 **opinions in this case?**

4 A. Yes.

5 **Q. And if we turn to page 6 of the disclosure**
6 **statement. In the middle of the page, right before**
7 **subsection C, there is a paragraph that begins**
8 **Leslie's gross expenditures. Do you see that?**

9 A. Yes.

10 **Q. And that lists what the payments were, the**
11 **gross expenditures includes what? Are you aware?**

12 A. It says gross expenditures from the costs
13 of defending, that appears to read defense, it makes
14 reference to defending. I'm not sure if that is
15 defense and indemnity combined or just defense.

16 **Q. Let's assume it's just the defense costs**
17 **and if we look at the numbers, it goes from 2005 to**
18 **2009 with the costs going from 2.2 million in 2005 to**
19 **12.3 million in 2009, correct?**

20 A. I see that.

21 **Q. And I've done the math. If you add those**
22 **numbers up between 2005 and 2009, defense costs would**

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1 **be 39.4 million dollars, does that look about right?**

2 A. I'll take your representation with the
3 math.

4 **Q. And then the next sentence in that**
5 **paragraph talks about Leslie's growth in indemnity or**
6 **settlement payments. Do you see that?**

7 A. Yes.

8 **Q. And they range from 1.1 million in 2005,**
9 **2.1 million in 2010. I'm sorry.**

10 A. There is a series of numbers in between so
11 --

12 **Q. Right. I'm just giving a range.**

13 A. The range exceeds, the high end is above
14 2.1, that's why I was clarifying.

15 **Q. The high was in 2009 when the settlement**
16 **costs were \$6.3 million?**

17 A. Correct.

18 **Q. And if we add up those years excluding**
19 **2010 because we don't have the numbers for 2009 on**
20 **defense costs, the total settlement costs were \$18.1**
21 **million. Does that look about right?**

22 A. Again, I'll take your representation for

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1 the math.

2 **Q. So it would be fair to say if the gross**
3 **costs of defending the asbestos claims is the 39.4**
4 **million and using those figures that are in the**
5 **disclosure statement, those numbers have been**
6 **trending upward over the past five years, correct?**

7 A. The -- and clearly the numbers in the
8 first sentence are increasing with each subsequent
9 year for defense costs. To clarify, those differ
10 from what's provided in the underlying claims data,
11 so in the underlying claims data which allegedly
12 reports the defense costs associated with each claim,
13 you don't get this much money, so I assume -- I don't
14 know for sure what the discrepancy is, but it could
15 be these are national coordinating costs were rather
16 nonclaim specific, but there is a discrepancy between
17 those two data sources and I don't see the foundation
18 for these numbers.

19 **Q. Assuming that those numbers are correct,**
20 **though, it looks like the defense costs were going up**
21 **over the last five years? Is that accurate?**

22 A. I mean, if those numbers are correct, they

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1 do. Each successive year gets larger.

2 **Q. And it looks like if those numbers are**
3 **correct that Leslie spent about twice as much on**
4 **defense costs as they did on settling claims?**

5 A. As a rough ratio.

6 **Q. Going back to paragraph 15 of your**
7 **declaration, the second item that you list as**
8 **potential changes in the tort environment are**
9 **Leslie's co-defendants who departed the tort system**
10 **during the bankruptcy wave that occurred in the first**
11 **part of the last decade are now being replaced with**
12 **well funded 524(g) trusts. Do you see that?**

13 A. Yes, I do.

14 **Q. How would that result in a downward**
15 **pressure on the amount that Leslie would be paying in**
16 **the tort system?**

17 A. So for an extended period of time, a lot
18 of the kind of what used to be the front line
19 defendants in asbestos litigation filed for
20 bankruptcy. While they were in bankruptcy, there
21 were stays against those entities so they weren't
22 really part of the active tort system.

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1 During that period, a number of different
2 co-defendants that still were in the tort system
3 faced increased litigation exposure because those
4 co-defendants were no longer there. And as these
5 trusts have come on line, the -- there is clarity as
6 to what kind of contribution towards the ultimate
7 payment amount would come from these, from the trusts
8 that replaced the predecessor entities.

9 So people have a better sense of what
10 their offset might be down the road and that lowers
11 the risk of exposure because there is less
12 uncertainty. Those trusts are very well funded in
13 California. They could easily be producing north of
14 a million dollars per mesothelioma claim on average
15 for compensation which didn't exist in 2005.

16 So there is a shift in terms of what kind
17 of offset you may see down the road. There is a
18 shift also in terms of this may affect how exposure
19 evidence enters the courtroom. It may not. There is
20 some outstanding questions, but there is really no
21 scenario where the presence of these well funded
22 trusts would increase their liability while there are

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1 many scenarios where the presence of these well
2 funded trusts would decrease the liability.

3 **Q. Or it could be that the presence of the**
4 **trust would be neutral?**

5 A. It's very difficult to view them being
6 neutral in any state that has joint and several
7 liability. Just the mere sum of money and the fact
8 that the offset is going to be large while before it
9 was viewed as very uncertain, that should decrease
10 the litigation risk. So in any place where there is
11 joint and several liability, it should have a
12 downward effect.

13 In jurisdictions -- some of the
14 liabilities of Leslie are joint and several
15 jurisdictions. The bulk has been in California which
16 has joint and several liability with regard to
17 economic damages, so it should lower the risk
18 exposure with regard to that, and it is several
19 liability with regard to noneconomic which does mean
20 it really hinges on the type of exposure evidence
21 that enters the courtroom.

22 **Q. In your experience, when claimants begin**

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1 **the process of looking for compensation for their**
2 **asbestos exposure, do they usually go to the tort**
3 **system first before they turn to the trusts?**

4 MS. DAVIS: I'm going to object. He is
5 not being presented as an expert on that basis, for
6 that reason. You can answer.

7 THE WITNESS: Historically, they almost
8 exclusively turned to the tort system first. The
9 trusts weren't operational. These companies were in
10 bankruptcy. So if you look in 2007, very few trusts
11 were up operating and processing claims so if I'm
12 going to look at 2007, 2008, there weren't that many
13 trusts they could seek compensation from. There were
14 some. Recently a number of those trusts have been
15 confirmed and they are starting to process claims.
16 So there is a framework now where they are able to do
17 that, but historically they weren't.

18 So definitively, historically, they turn
19 to the tort system first, the trust second. You can
20 see that in the historical Johns Manville data that
21 even where the trusts were available with Manville
22 going way back, plaintiffs typically pursued their

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1 tort claim and they would show up one, two, three
2 years later in the Manville Trust, so they would go
3 after the Manville compensation after the tort
4 compensation.

5 For the more recent trusts that are coming
6 online, clearly we don't have the data. They are
7 just coming on line but now at least is the potential
8 they could come first and whether or not it comes
9 first they have site lists. They have other ways of
10 establishing exposure to those products and
11 mechanisms for defendants to show that there is
12 liability in those other companies and that a share
13 of the liability is attributable to them.

14 **Q. Well, how is a company that's still in the**
15 **tort system going to be able to take advantage of**
16 **existence of those trusts to reduce the amount that**
17 **it's going to pay to a company?**

18 A. So it's going to depend on the specific
19 jurisdictions. The case management orders that are
20 in place. It's going to vary by jurisdiction. But
21 in very general terms, they are going to be able to
22 take advantage of some of the information in the

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1 trusts, so if the trust has a site list, for example,
2 and it has preapproved sites where there is
3 presumptively exposure, they can take those site
4 lists, they can cede it to a plaintiff who may or may
5 not recall exposure to Owens Corning, but worked at
6 four sites that Owens Corning says its product is all
7 over the site, and there is presumptive exposure,
8 they could do what the plaintiff's bar used to do,
9 and help refresh the plaintiff's memory, they could
10 say you worked here and Owens Corning is very
11 commonly present here.

12 And if you go to the conferences and you
13 listen to the debate between plaintiff's bar and
14 defense bar, that's exactly what they are talking
15 about. The plaintiff's bar will tell you we used to
16 refresh everybody's recollection prior to a
17 deposition of all of these front line defendants.
18 They didn't remember. It was 40, 50 years ago. We
19 don't need to do that any longer is what the
20 plaintiff's bar will tell you in these conferences,
21 because it's not in their interest, and it's the
22 defense bar's job now to do that.

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1 Well, this is what's giving the defense
2 bar lots of data to do that. The trusts are laying
3 out where their products were. They are laying out
4 where there is presumptively exposure, and the way
5 defendants are pursuing this really varies by
6 jurisdiction. Some are asking for it in the form of
7 admissions. Some are asking for it in case
8 management orders where you have to file your trust
9 claims before you get a trial date. It varies by
10 jurisdiction as to how that will play out.

11 **Q. And given that there is no data at this**
12 **point to be able to look to, you're speculating that**
13 **that's what will happen? Is that a fair statement?**

14 A. No.

15 **Q. Why not?**

16 A. There is lots of data as to what the tort
17 system looked like when these companies were paying
18 claims, these now defunct, bankrupt companies when
19 these were in the tort system, there is lots of data.
20 These companies were in the tort system for more than
21 a decade. So if you want to know what all the
22 members -- for example, members of the CCR

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1 collectively used to pay less than a quarter million
2 apiece for mesothelioma claims back in '96, '97, '98,
3 '99, 2000 before a large number of those companies
4 went for bankruptcy.

5 If you look at resultant trusts from
6 former CCR members, those trusts now pay about a
7 quarter million of cash, not liquidated values, not
8 TDP values. When you adjust for payment percentages,
9 they pay about a quarter million and those don't
10 include the solvent entities that remain from the
11 CCR.

12 So if you believe that the courts were
13 going to get to transparency between the tort system
14 and the trust system and it used to be that a group
15 of companies paid a quarter million and now their
16 trusts are paying a quarter million, a very logical
17 conclusion for that is there shouldn't be any
18 transfer of liability. The liability should revert
19 back to how it looked when those companies were in
20 the tort system. It won't look like that when all
21 the stays are in place and no one can get
22 compensation from them.

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1 But post the existence of the trusts, we
2 actually know what that world used to look like. The
3 real outstanding question was whether or not the tort
4 system and the trust system will have transparency.
5 If they do, we actually have a pretty good idea of
6 what it will revert to.

7 **Q. So but we still don't know what that**
8 **transparency level is going to be, if at all?**

9 A. We know some aspects of it. We know that
10 there are site lists. We know that defendants have
11 more information available to them than they did five
12 years ago. So we know that they are in a better
13 position to highlight the exposure to the products of
14 these bankrupt entities than they used to be. So as
15 that information in each of these trusts comes on
16 line and they establish site lists and procedures,
17 and you see what they are doing through time, you
18 know those defenses will get -- they can only get
19 stronger. They don't get weaker.

20 **Q. Well, I guess my question ultimately is,**
21 **how are we going to know, how do we know now as we**
22 **are sitting here today that the plaintiffs are going**

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1 **to go to the trusts first as opposed to the tort**
2 **system first?**

3 A. I don't even think that's the relevant
4 question when I look at most of these. So I mean, I
5 -- do I know what order they are going to do it in?
6 I don't. That's going to be a function of the
7 underlying economics. Whichever way makes the best
8 economic sense for a given plaintiff presumably is
9 the way they will go and that's an individual
10 plaintiff specific question in terms of the trusts
11 probably aren't capable of paying money faster. Many
12 of them.

13 But if there is a cost associated with
14 that, they may choose to defer. But that's not the
15 right question for what will happen for solvent
16 defendants in the tort system.

17 **Q. Why do you say it's not the right**
18 **question?**

19 A. The right question is, how does this
20 affect settlement. And how it affects settlement is
21 when parties address settlement, it's a classic
22 economic negotiation. There is an end game, which is

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1 if you go to trial and people backward induce from
2 that end game to what they are willing to pay in
3 settlement. That's how it works.

4 So when something changes the end game at
5 trial, that affects settlement. So if, for example,
6 companies knew they could establish that a claimant
7 had a million dollars of compensation coming from
8 trusts, whether the claimant actually has already
9 received that money or they simply have the evidence
10 that they can get it later, it's a million dollar
11 offset to them on a verdict either way potentially
12 because that money is there.

13 If you take the verdict, you have the
14 release for everybody potentially and then you can go
15 file the claims on behalf of the person under the
16 contribution rules of the trust. If they have
17 already filed the claim and they already have the
18 money, then it's just already there, so the timing is
19 not necessarily the relevant question. The relevant
20 question is how much money will it be and what type
21 of exposure evidence does this push into the
22 courtroom. Those are the two things that will affect

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1 the settlement discussion.

2 **Q. Item three in paragraph 15 is Leslie has**
3 **been prevailing at trial. How does that put downward**
4 **pressure?**

5 A. Each trial has the potential to get an
6 adverse outcome which typically for defendants if
7 they get a strong adverse outcome from a defendants'
8 perspective of a large verdict that's upheld
9 frequently that causes them to pay more money in
10 future settlements. They reassessed their risk
11 profile.

12 Similarly, every time they get a defense
13 verdict, they get verification from a jury that the
14 defenses they have are believable defenses to a jury.
15 The juries are ruling in their favor. So with each
16 passing verdict where a defendant prevails, the
17 strength of their defenses is being confirmed and
18 typically defendants can take a more aggressive
19 position after that in their settlement negotiations
20 because they have more faith in their defenses. And
21 that tends in contrast if they are losing and they
22 get hit with a 5 or 10 million dollar verdict, you

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1 often get pressure in the other direction. And
2 that's a pattern you can look across defendants
3 generally and so you're getting confirmation that
4 their defenses are valid.

5 **Q. And you've talked about the eight cases**
6 **that went through trial. What years did those trials**
7 **occur?**

8 A. I don't remember.

9 **Q. What year was the case that resulted in a**
10 **verdict against Leslie?**

11 A. Again, I don't remember.

12 **Q. I'm going back to paragraph 15, the fourth**
13 **item that you list is California appellant rules have**
14 **been favorable for equipment manufacturers. How does**
15 **that -- I think we talked about this a little bit.**
16 **But how does it put downward pressure on the likely**
17 **future claims in the cases?**

18 A. Well, my understanding is that plaintiffs
19 could bring at least three different theories of how
20 an equipment manufacturer could face liability. One
21 was that the asbestos containing products put on the
22 outside of their equipment, even though they didn't

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1 supply that, they would be liable for that being
2 there. Maybe because they spec'ed it. Maybe they
3 didn't spec it, but it was put there, but that's a
4 potential avenue towards liability.

5 There is a second one which is replacement
6 parts that contained asbestos that were put in, they
7 could face liability for. And the third is that just
8 the parts that were originally supplied by them when
9 they first sold the piece of equipment, they could be
10 liable and initially they faced litigation risk with
11 regard to all three of those. Through time, the
12 appellate court seemed to be moving in a direction
13 where they may very well not face liability for the
14 asbestos products put on the outside of the equipment
15 and they may well may not face liability for
16 replacement parts put in.

17 And so two of the three avenues through
18 which one potentially could have established
19 liability for them and that were theories of cases
20 three, four years ago are running into trouble in the
21 appellate courts, and may not be viable theories
22 going forward.

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1 So if you go from three sources of
2 liability to only one, your litigation risk has gone
3 down, your several share has declined because you're
4 not liable now for the high temp product on the
5 outside. You're only liable for maybe a gasket on
6 the inside. And at that, only the original one
7 supplied with the product. So the amount of a
8 person's lifetime exposure that's attributable to you
9 has shrunk rapidly for the typical claimant. So for
10 the typical claimant, the possible share that could
11 be assigned to Leslie has diminished.

12 **Q. And we already talked about the fact that**
13 **the opinions that you reviewed with regard to item**
14 **number four were intermediate appellate court**
15 **opinions, correct? They are not California Supreme**
16 **Court opinion?**

17 A. I'm not aware of a California Supreme
18 Court opinions.

19 **Q. And all of those opinions that are**
20 **favorable could in fact be overturned by the**
21 **California Supreme Court on appeal, right?**

22 A. We can speculate about what the Supreme

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1 Court may do.

2 **Q. But we can't quantify it, can we?**

3 A. We know what the appellate courts have
4 done and we know that in general those are binding in
5 the near term on the lower courts. So we know -- we
6 do have a sense of what's going on and in the absence
7 of the California Supreme Court weighing in, we know
8 where we stand. If it weighs in, and it alters it,
9 it may do that.

10 **Q. And in fact, it would reopen all of those**
11 **cases where the intermediate appellate courts had**
12 **ruled against the plaintiff?**

13 A. It could.

14 **Q. It could result in further verdicts**
15 **against the defendants?**

16 A. We can speculate about all sorts of
17 scenarios. My only point is very simple. Leslie is
18 clearly in better shape with the appellate court
19 rulings going in their favor than the appellate court
20 rulings having gone against them.

21 **Q. Did you discuss the meaning of those**
22 **appellate court rulings with counsel to the insurance**

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1 **company?**

2 A. No.

3 **Q. Did you discuss it with any attorney?**

4 A. As I said, I've discussed these really
5 starting with Taylor a number of years ago, I've
6 discussed this with a number of underlying defense
7 attorneys and plaintiff attorneys about what they
8 think the likely impacts would be.

9 **Q. Anyone that you discussed it with recently**
10 **in terms of in connection with your preparation of**
11 **your opinion in this case?**

12 A. No.

13 **Q. So you didn't discuss it with anyone at**
14 **Wilson Elser?**

15 A. No.

16 **Q. Why did you pick Wilson Elser, by the way,**
17 **of all the law firms out there that might have stuff**
18 **posted about asbestos tort liability? Why did you**
19 **pick them?**

20 A. It's just a representative article that
21 summarizes more from an attorney's perspective what
22 these may do. It's -- you know, there is nothing

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1 special about that particular one.

2 **Q. Did you look at others?**

3 A. I didn't do an exhaustive search. I
4 talked to numerous attorneys and all of them that
5 I've ever talked to agree that this creates downward
6 pressure on equipment manufacturers that I have
7 spoken with. Some do hope that it will be overturned
8 on appeal and hope that that would get reversed, but
9 they all agreed that under the current status, this
10 creates downward pressure.

11 **Q. And which attorneys have you talked to**
12 **about these opinions?**

13 A. I'm not going to be able to itemize all of
14 them. I'm saying I have gone to, at this point --
15 many of them are on my CV -- but I attend many of the
16 conferences on asbestos litigation. There is panels
17 on this topic at those conferences where people talk
18 about the impact of this. I've talked to a number of
19 the attorneys in those panels in follow-up
20 discussions. I've talked in group settings. I
21 couldn't attach any one opinion with any one
22 attorney.

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1 **Q. Do you recall anybody as you're sitting**
2 **here today?**

3 A. In terms of general discussions?

4 **Q. Yes.**

5 A. As I said, I've talked -- I'm not going to
6 be able to tie a particular name to a particular
7 topic. I more have recollections of having had
8 discussions on the environment with a large group of
9 attorneys. I'm not tying any one of them to any one
10 opinion. As I said, I can't do it.

11 **Q. What about the general discussions? Can**
12 **you recall anybody you've spoken to about generally**
13 **the environment?**

14 A. Generally?

15 **Q. Yes.**

16 A. I have a hard time going through. And
17 I've -- on the plaintiff's side, I've spoken with Bob
18 Phillips, Perry White, Joe Rice, generally about tort
19 environment issues. Probably, let's see -- Perry
20 Router. Do I have that right?

21 I've talked with attorneys on the defense
22 side about the litigation environment. Going through

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1 names and numbers of attorneys at Cambridge I've
2 spoken with. I've spoken with different coverage
3 counsel about what they think the impacts of these
4 things might be. I've spoken with different in-house
5 counsel about what the potential impacts of these
6 things might be.

7 **Q. If we go to paragraph 16 of your**
8 **declaration. You say extrapolations of Leslie's tort**
9 **history that ignore recent and likely positive**
10 **changes in the tort environment result in the nominal**
11 **value of Leslie's unresolved asbestos claims,**
12 **including those expected to be filed in the future**
13 **ranging from 60 million to 90 million. Do you see**
14 **that?**

15 A. I do.

16 **Q. The likely positive changes that you refer**
17 **to in that sentence, do those relate back to the ones**
18 **we've talked about in paragraph 15?**

19 A. Correct.

20 **Q. Anything other than those four?**

21 A. Those are the four I was referring to.

22 **Q. You say the middle of this range is 75 --**

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1 **excuse me, the middle of this range, 75 million, is**
2 **most consistent with the claims history, correct?**

3 A. Correct.

4 **Q. So if you look just at the claims history**
5 **and don't include the potential or likely positive**
6 **changes in the tort environment, one would conclude**
7 **the potential future claims against the debtor are**
8 **somewhere in the neighborhood of \$75 million?**

9 A. Yes. It would be in that neighborhood.

10 **Q. You then go on to say including**
11 **extrapolations that invoke less probable assumptions**
12 **expands that range to 50 to 100 million. Do you see**
13 **that?**

14 A. I do.

15 **Q. I was a little confused by this because**
16 **you say less probable assumptions, but then you**
17 **include a number that's lower than the 60 million**
18 **dollar range. Are there some assumptions that**
19 **would -- that are not probable that would make that**
20 **number even lower?**

21 A. Well, there is -- you could take more
22 extreme assumptions in either direction both for the

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1 good and the bad. You can be too pessimistic or too
2 optimistic in that sense. I talk a little bit about
3 those things. But for example, their liability is
4 driven by -- and the TDP reflects this -- below deck
5 Naval claims and Naval and shipyard-based disease
6 incidents peaked about 10 years earlier than
7 construction based disease incidents in terms of
8 mesothelioma.

9 So if you take a national curve and you
10 trend out the liability over a national curve, you're
11 probably overstating liability because that's going
12 to overstate the number of future Naval claims
13 because those claims peaked earlier due to World War
14 II. So you're likely to see a sharper rate of
15 decline.

16 You could assume that all of it will
17 follow the Naval curve. If you do that, you can get
18 a number closer to \$50 million, but they do have some
19 nonNaval claims. So putting 100 percent weight on
20 the Naval curve is an assumption you could make. You
21 could say that's what's driving their liability, so
22 that's how I'm going to do an extrapolation. That

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1 probably would understate, because they have a
2 mixture of largely Naval in terms of dollars and some
3 other claims which probably that curve would be too
4 steep for.

5 Similarly, at the high end, if you're
6 going to do the whole thing on the national curve,
7 that's going to overstate. And if you do the whole
8 thing on the national curve, you don't account for
9 the impact of an aging population. You kind of
10 ignore some of those things. But if those are your
11 assumptions, you can start getting numbers around 100
12 million. I don't think those are likely. I don't
13 think you should view those as in the reasonable
14 range. I think those are assumptions that the data
15 tell us shouldn't happen, we have good reason to
16 believe. But there are people that may argue for
17 them.

18 **Q. On page 7 of your report, paragraph 17,**
19 **you have included a table to show the nominal value**
20 **and then the net present value of that 50 to \$100**
21 **million range, correct?**

22 A. Correct.

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1 **Q. And I think you just explained paragraph**
2 **18, which is the using the national, U.S. national**
3 **incident curve versus the Naval incident curve. That**
4 **was reflected in paragraph 18?**

5 A. Yes. That's an issue discussed there.

6 **Q. And then paragraph 19 is looking at it if**
7 **they were able to resolve all older pending**
8 **mesothelioma. What did you mean by that?**

9 A. Most defendants end up with a portion of
10 the claims filing against them never resolving, so
11 the claims will eventually be 10, 15, 20 years old
12 and they are never technically resolved in the tort
13 system. They are still open. It's very rare to see
14 those claimants ever get paid. Some people will call
15 them abandoned claims. Some people will call them
16 stale claims.

17 But there is typically not activity on
18 them for an extended period and companies don't
19 expect to have to pay anything, but they are
20 technically in the data as open claims. So there is
21 a concept of a resolution rate. What fraction of
22 your claims actually ever get resolved as opposed to

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1 just kind of abandoned, orphaned in the tort system.

2 The data for Leslie appears to be
3 consistent with many, that their resolving it seems
4 around 85 percent of their claims, and 15 percent are
5 getting old. So if we look at the earlier year claim
6 filings, there is kind of a stable percentage of
7 those claims that are just sitting open. You kind of
8 get up to somewhere, 80, 85, 88 percent, and then it
9 stops, and you don't see additional resolutions.

10 So there is a question of what do you do
11 with those older claims? One approach that some
12 people will do is they will ignore the fact that they
13 are older and they will say I'm going to assume that
14 they are all going to get paid or not all going to
15 get resolved, or they are going to get resolved with
16 the same rate and dismissal rates that have been
17 resolved. And for the same values, and generally
18 that overvalues them grossly.

19 So in reality, few of them actually get
20 resolved and few of them get resolved for
21 substantially less money than the typical paid claim
22 that's resolved quickly. So there are still young

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1 defendants so there is more uncertainty than if
2 you're looking at a defendant that's had 20 years
3 history where you can look at their first 10 years
4 filings and look at a resolution rate.

5 So there is more uncertainty about many
6 defendants about what to do with that 15 percent and
7 that's really what it's getting at, the high end of
8 the range says we are going to assume that those
9 claims that are four years old, five years old, that
10 15 percent is going to get paid at the same rate as
11 all the other claims and paid the same amount, and
12 history has told us that overvalues. At the low end,
13 I'm going to assume none of them get paid and if you
14 assume there won't be another dollar, that can only
15 understate, not overstate. That's how you go to the
16 low end.

17 **Q. And just so I'm clear, you may have**
18 **answered this question already, but I just want to**
19 **make sure I understand it. You have the midpoint**
20 **baseline of 75 million based on just looking at the**
21 **claims history, not taking into account what might**
22 **happen in the tort system in terms of reforms that**

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1 **would reduce that potentially down the road.**

2 A. Or the impact of recent -- relatively
3 recent rulings which may not be reflected in the data
4 from three or four years ago.

5 **Q. But you don't put a -- you don't quantify**
6 **what those tort environment impacts might be in terms**
7 **of how much it would reduce the potential future**
8 **claims against Leslie?**

9 A. I have not done that at this point in
10 time.

11 **Q. And the reason you didn't do that is you**
12 **didn't think you had to because at 75 million looking**
13 **at the TDP values, they are overpaying any claim, is**
14 **that accurate?**

15 A. Correct.

16 **Q. Going to paragraph 21 of your report and**
17 **you have a caption over the top of this that says**
18 **Leslie's TDP and payment projects are inconsistent**
19 **with its claims history. And you state both the**
20 **number of compensable mesothelioma claims in the**
21 **Leslie liability estimate the value of those claims**
22 **established in the TDP collectively, the TDP forecast**

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1 **are inconsistent with Leslie's claims history. Now,**
2 **what is the Leslie liability estimate that you refer**
3 **to here?**

4 A. It's really defined in paragraph four.
5 And it is the estimate of Leslie's liability for
6 asbestos -- well, ARPC is estimate of assigned values
7 under the proposed TDP.

8 **Q. And what does that ARPC estimate conclude**
9 **in terms of assigned values under the proposed TDP?**

10 A. It adopts the TDP values, and my
11 understanding is that ARPC when I look at the math,
12 how it's put together is providing a projection of
13 accounts of compensable claims. And it's assigning
14 the values that the TDP prescribes to those claims
15 and then it adds it up to get to the \$230 million.

16 **Q. So just so I understand, you take the TDP**
17 **values and assuming the number of claims ARPC are**
18 **soon to be filing against the trust would result**
19 **ultimately in \$230 million of claims against the**
20 **trust?**

21 A. The estimate I was provided gives the cash
22 flows, so I had actually divided the cash flow for

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1 the given year by the amount, by the scheduled value
2 to recover the estimated number of claims, but it
3 appears to adopt those claim values that are
4 explicitly in the spreadsheets.

5 **Q. And comparing then the Leslie liability**
6 **estimate and the value of the claims under the --**
7 **established in the TDP, you see the TDP forecast then**
8 **projects future asbestos related indemnity under the**
9 **trust to be 230 million and not -- can you just walk**
10 **me through how you came to the 230 million?**

11 A. It's the number taken from the spreadsheet
12 provided by ARPC. That's what their total number is.

13 **Q. And that would be future claims against**
14 **the trust, correct?**

15 A. Future and pending.

16 **Q. It's not an estimate of what the potential**
17 **future claims against Leslie would be in the tort**
18 **system?**

19 A. That's the point. It's very much not
20 that. It's about three times that number.

21 **Q. And then you go on to talk about two**
22 **assumptions that you think account for the**

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1 **discrepancy.**

2 A. Correct.

3 **Q. And the first is that the TDP forecast**
4 **assumes that the trust will pay twice as many**
5 **mesothelioma claims as Leslie did, while in the tort**
6 **system. How did you come up with that number?**

7 A. Leslie's, the most claims it ever sees per
8 year in the tort system at any point in time is about
9 400. When it's seeing those kinds of claims, it's
10 seeing that 75 percent arguably pushing 80 percent
11 are getting dismissed, so that means there is no more
12 than 100 claims left after you've taken care of the
13 dismissals.

14 On top of that, there is a resolution rate
15 and there is a set of them that haven't been getting
16 resolved, so you're probably in a range at a low end
17 of something like 60 compensable claims a year and at
18 a high end something like closer to 90. There is a
19 little uncertainty because it's in that neighborhood.
20 It's not in the neighborhood of 150. That's
21 inconsistent with the 75, 80 percent dismissal rate
22 and flows of 400 claim files per year for

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1 mesothelioma.

2 So you can't get to 150 compensable
3 claims. They weren't seeing that. It's not what
4 they were paying in one year. It's assuming once
5 they were resolving the whole stock of what's getting
6 paid, the ones that would resolve would resolve
7 similarly to the ones that have already resolved for
8 a given filing year.

9 **Q. If you take that out, take out that**
10 **assumption, it reduces the estimate of future claims,**
11 **future and pending claims against the trust to 115**
12 **million?**

13 A. If you eliminate half the claims, you're
14 going to eliminate half the payments.

15 **Q. You're not saying that the trust is going**
16 **to pay claims that would not have been compensable in**
17 **the tort system, right?**

18 A. I'm saying the forecast, the ARPC forecast
19 appears to be saying exactly that. It's paying a
20 larger body of claims than Leslie has demonstrated
21 are compensable in the tort system. That's
22 explicitly what that forecast is saying.

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1 **Q. And the purpose of that is to negotiate**
2 **with Leslie over what the payment percentage is going**
3 **to be in the TDP, correct?**

4 A. I presume that's a purpose for it.

5 **Q. Because they want to make sure there is**
6 **enough money to pay all the future claims, is that a**
7 **fair statement?**

8 A. You're speaking on behalf of yourself as
9 the future's rep, or speaking generally about the
10 process?

11 **Q. Generally about the process.**

12 A. I think it's an adversarial process. The
13 future represents that, and the people who represent
14 the pending claims presumably want as much money as
15 possible for their pending claims. And you have to
16 reach a compromise with them or get to resolution. I
17 assume that the plaintiff's attorneys are maximizing
18 the economic outcome of their clients, as I
19 understand their ethical obligation to be.

20 **Q. So ARPC would have been looking at the**
21 **worst possible case scenario for the number of claims**
22 **that would be filed against the trust in order to**

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1 **ensure that there was enough money left over to pay**
2 **all those future claims that come in, is that a fair**
3 **statement?**

4 A. No.

5 **Q. Why not?**

6 A. The forecast they put down is very
7 inconsistent with that statement. They have a
8 forecast that has about 1 percent of the money being
9 paid, for example, to nonmalignant claims. There is
10 a provision in the trust that says up to 20 percent
11 can go to that group. Presumably that provision
12 could have been written as 2 percent or 1 percent if
13 the worst possible scenario was seen as 1 percent.
14 The cap in the trust was 20, so presumably there is
15 scenarios under which the trust will end up
16 compensating to the tune of 20 percent of the money
17 in nonmalignant claims. I don't see that in the ARPC
18 scenario.

19 **Q. Isn't it true that it says in the trust**
20 **agreement that claims are to be compensated,**
21 **nonmalignant claims -- let me strike that.**
22 **20 percent of the amount of money in the**

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1 **trust is set aside on a year-by-year basis to pay**
2 **potential nonmalignant claims, correct?**

3 A. Category 1, level I and level II, I
4 believe.

5 **Q. Those are the nonmalignant claims.**

6 A. There is higher level nonmalignant claims
7 as well.

8 **Q. And it doesn't necessarily mean that they**
9 **are going to pay out 20 percent on a year-by-year**
10 **basis for nonmalignant claims, does it?**

11 A. No. There is a possibility.

12 **Q. The only way they are going to pay those**
13 **claims out is if nonmalignant claims would be paid**
14 **out for what is provided for them in the trust?**

15 A. Presumably the trustees are going to
16 enforce the terms of the trust.

17 **Q. So you're not -- you're not opining that**
18 **the trustees are going to somehow pay fraudulent**
19 **claims when they get filed with the trust?**

20 A. I think I'm more going back to if you look
21 at, for example, the Rand report that came out
22 recently which shows for a series of trusts what

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1 fraction of the payments have gone to the
2 nonmalignant claims and the fraction is 40 percent
3 and that's happening while in the tort system, 90
4 percent is going to mesothelioma and 5 percent is
5 going to nonmalignant claims.

6 So in practice, the trusts are
7 compensating or paying a much larger fraction of
8 claims to nonmalignant claims than tort defendants.
9 That doesn't mean the Leslie Controls trust will do
10 that, but it means when I look at other trusts, that
11 seems to be what they are doing.

12 If you can point to very stark differences
13 in the language between the TDP language of the two,
14 that would tell me why I wouldn't expect that to be
15 the outcome, Leslie may be different. But the
16 history of these other trusts is that over a third,
17 40, 45 percent of the money to date has been going to
18 nonmalignant claims, while only 5, at most 10 percent
19 goes to that group in the tort system. And that's a
20 stark contrast in terms of how the two systems appear
21 to be compensating claimants.

22 **Q. And the trusts that are in place have**

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1 **certain criteria that have to be met for someone who**
2 **files a claim, whether it's a malignant or**
3 **nonmalignant claim, correct?**

4 A. They specify criteria.

5 **Q. And the Leslie Controls trust specifies**
6 **criteria that have to be met before someone can have**
7 **a compensable -- will be compensated by the trust?**

8 A. It specifies criteria.

9 **Q. And you have no basis to believe that as**
10 **we are setting here today, that the trustees are**
11 **going to disregard those criteria and say we are not**
12 **going to compensate or we are going to compensate**
13 **people who don't meet those criteria?**

14 A. I'm more based on the history of other
15 trusts, I have a question about whether the manner in
16 which those criteria will be interpreted and enforced
17 will be consistent with less than 1 percent of the
18 money going to nonmalignant claims, or if the
19 criteria themselves are actually looser than the
20 criteria in the tort system.

21 I'm not saying I expect the trustees to
22 violate their fiduciary responsibility, but there is

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1 a question as to whether the criteria present in the
2 trust actually mimics the outcome in the tort or it
3 allows in a large group of malignant claims that
4 wouldn't have been compensable in the tort. Does it
5 say, for example, that if you're on an inactive
6 docket, you're not eligible for compensation? Does
7 it say that in the Leslie Controls trust? I don't
8 recall as I read through, but I would think if you
9 wanted to mimic the tort system, it would explicitly
10 say that. And if it doesn't, I ask why is that
11 omitted? That's one of the first defenses that a
12 tort defendant has is if you're on an inactive
13 docket, you're not compensable.

14 **Q. What does it mean to be on an inactive**
15 **docket?**

16 A. Varies a little bit by state, but in
17 general, similar to medical criteria bills, that your
18 litigation is effectively stayed. They are tolling
19 the statute of limitations. If you subsequently
20 develop an impairment, however this may be defined in
21 a particular jurisdiction, you can come off the
22 inactive docket and pursue your tort claim and you

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1 won't run into any statute of limitations, but until
2 you've done that, it's inactive. Nothing's happened.

3 **Q. That doesn't mean if you're on inactive**
4 **docket that people on that docket are never going to**
5 **be compensated, right?**

6 A. They are very akin to a person not on an
7 inactive docket who may subsequently develop a
8 disease. Whether you're on an inactive docket or
9 not, if you develop mesothelioma down the road, it's
10 a compensable disease, you get paid for the
11 mesothelioma under the trust. And the future's rep
12 is there to protect the right of future claimants. A
13 person on the inactive docket strikes me as very akin
14 to that. They don't have impairment that qualifies
15 for compensation in the tort system currently but
16 they may develop it in the future. And if they do,
17 they can pursue their claim at that time.

18 **Q. You go on in paragraph 21 to say the**
19 **second reason that the TDP forecasts are overstated**
20 **is that they compensate 150 percent of Leslie's**
21 **historical average of payment, correct?**

22 A. It's roughly 150 percent. That's correct.

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1 **Q. And that's because the liquidated amount**
2 **under the TDP procedures is an average of about**
3 **\$100,000, correct?**

4 A. Just north of \$100,000.

5 **Q. And we've already talked about how that**
6 **doesn't take into account the payment percentage**
7 **which is 40 percent of that 100,000?**

8 A. That's correct.

9 **Q. So if you take that into account as to**
10 **what the claimants against the trust will actually**
11 **receive in terms of dollars, that's below the average**
12 **that was being paid by Leslie in the tort system,**
13 **correct?**

14 MS. DAVIS: Objection to form.

15 THE WITNESS: That depends how you want to
16 compute it. Within the group of compensable claims
17 in the tort system, the historical average over the
18 last three or four years has been 60 to \$65,000. As
19 I said, that's trending down. You could go back to
20 some of the earlier tables in that report and you see
21 that's gone from 80,000 in 2008 to 50,000 in 2010,
22 but it's averaged around 60, 65,000 so something a

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1 little north of 100,000 is about 50 percent larger.

2 Assuming that it only compensated the same
3 group of claimants, if you include the other
4 claimants that the number of compensable claims seems
5 to anticipate, then you have to average in a whole
6 bunch of zeros. Those are claims that would have
7 received zero. They would have been dismissed claims
8 in the tort system.

9 When you bring those in -- those are
10 claims that would have been dismissed, if you bring
11 those in the tort system, paying a total of \$65,000,
12 it means you're paying about \$15,000 per resolved
13 claim. Three quarters get zero, one quarter averages
14 60,000. So saying whether -- if you applied a 40
15 percent payment percentage, so we are getting just
16 north of 45,000 of cash is less than they would have
17 gotten in the tort system, that depends which
18 claimant.

19 It's much more than a claimant dismissed
20 in the tort system would have gotten. It's more than
21 what many claimants would have gotten who were in the
22 tort system and less than what the highly compensated

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1 claimants would have gotten in the tort system.

2 **Q. Are you assuming in that statement that**
3 **every claim that gets filed against the trust is**
4 **going to have been paid?**

5 A. No. I'm saying I have -- I'm just making
6 clear that there is two pieces here. There is an
7 overstatement in the number of compensable claims.
8 And for the compensable claims, there is -- the value
9 is too high. It's about 50 percent too high. The
10 liquidated value.

11 **Q. But I think you testified that if you look**
12 **at the -- if you take the number of claims dismissed**
13 **and the number of claims that are settled in the tort**
14 **system and you took an average across all of those**
15 **claims, then the amount paid is more like -- it could**
16 **be as low as \$15,000 per claimant?**

17 A. Correct.

18 **Q. But that then assumes that every claim**
19 **that gets filed against the trust is going to get**
20 **paid as opposed to claims that might get filed**
21 **against the trust where the trust says you haven't**
22 **met the criteria to have been exposed to a Leslie**

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1 **property, for example?**

2 A. No. I'm trying to address your earlier
3 question, which if you say I applied a 40,000 payment
4 to this, is that more or less than claimants would
5 have gotten in the tort system. That depends how you
6 define the population of claimants in the tort
7 system. I can define that it's less than the average
8 amount that the average compensable claimant in the
9 old tort environment was receiving. It's more than
10 the amount that the typical resolved claim got. It's
11 more -- it's even greater than the typical amount of
12 the claim filed against Leslie and it's substantially
13 higher than the typical mesothelioma claim in the
14 tort system because the vast majority don't name
15 Leslie.

16 So it depends what universe of claimants
17 are going to get paid that number for whether 40
18 percent is too high or too small.

19 **Q. What is the universe that;s going to get**
20 **paid the 40 percent against the Leslie trust?**

21 A. That depends how the trust criteria are
22 enforced.

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1 **Q. If we assume that the same number of**
2 **claims get filed against the trust as were filed**
3 **against Leslie in the tort system, and the same**
4 **number of claims are rejected by the trust as were**
5 **dismissed in the tort system, then \$40,000 is lower**
6 **than what the payment percentage was or the payment**
7 **payouts were to claimants in the tort system, right?**

8 A. On average. As I said, there is a group,
9 the average value in the tort system is driven
10 heavily by a small group of highly compensated
11 claims. There is a larger group of claimants that
12 don't get nearly that much money and the average is
13 60 to 65,000, but 40,000 per claimant would result in
14 a large number of overcompensated claims and a small
15 number of highly undercompensated claims.

16 **Q. Paragraph 24, you go on to say, in**
17 **addition, the TDP allows for substantial sums to be**
18 **paid to category B nonmalignant claims that have de**
19 **minimis tort value. Do you see that?**

20 A. I do.

21 **Q. What does de minimis mean to you?**

22 A. Well, in this context, they have received

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1 around 1 percent or less of the money in the tort
2 environment to date.

3 **Q. What is it on a dollar amount?**

4 A. Per claimant?

5 **Q. Yes.**

6 A. Okay. The average payment is on the order
7 of \$5,000 to a very small number of claimants.

8 **Q. And how much will those claimants receive**
9 **under the tort or under the trust if it's approved?**

10 A. If it's approved?

11 **Q. Yes.**

12 A. That's an open question. If you believe
13 the ARPC kind of TDP forecast, they say it's a very
14 small number. It's less than 1 percent. If you
15 believe that the collar of 20 percent may be binding,
16 that 20 percent of payments may be made to this group
17 that would be about 20 times what they were getting
18 in the tort as a fraction of the total money.

19 So it again it depends on how it's
20 enforced. This is just saying it allows for
21 substantial sums. It doesn't say it's going to do
22 it, but it's definitely written explicitly to allow

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1 for 20 percent of the money to go to a group that in
2 the history of the tort got a -- about 1 percent of
3 the money.

4 **Q. My question was a bad question. But my**
5 **question was more how much is a person who files a**
6 **claim under category B nonmalignant claim against the**
7 **trust, what are they going to receive in terms of a**
8 **dollar amount?**

9 A. Do you recall which page actually has the
10 trust procedures in it to look up the values? I
11 don't remember it, but it's provided.

12 **Q. There is a table in the trust procedures.**
13 **It's page IV of the disclosure statement.**

14 A. So it's providing an average value for
15 level II of 4500, 1500 for level I, and those are the
16 two that are technically in category B, the severe
17 asbestotics can receive an average or expect to
18 receive an average of 20,000.

19 **Q. And again, if you apply the 40 percent**
20 **payment percentage under the TDP, the 4500 figure and**
21 **1500 figure is very small?**

22 A. 40 percent is going to be \$600 for the one

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1 and for the other it's in the neighborhood of just
2 under 2,000, \$1800.

3 **Q. Which is lower than the \$5,000 average**
4 **that claimants who actually received a payment in the**
5 **tort system received?**

6 A. That's not the right comparison because
7 the \$5,000 average includes the claimants that are
8 scheduled to get 20,000 under the trust. It's all
9 nonmalignant claims are in that 5,000 average so
10 that's not a fair comparison.

11 **Q. Just to follow on that, were you saying**
12 **category one and two claims are ordinarily not**
13 **compensable in the tort system? Is that what you're**
14 **saying?**

15 A. I said their tort history has shown that
16 these do not have substantial value against Leslie,
17 and that in many jurisdictions unimpaired
18 nonmalignant claims don't get trial dates. They may
19 have an inactive docket. They may fail medical
20 criteria. There is different provisions in different
21 jurisdictions.

22 **Q. And those cases that you're talking about**

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1 **would fall within level I and II of the TDP?**

2 A. I mean, severe asbestotics may have severe
3 impairment so it's not typically going to fall to
4 inactive docket. Whether or not some of the level II
5 claims would or wouldn't is probably a jurisdiction
6 by jurisdiction question.

7 **Q. So level III, it is likely they would**
8 **receive compensation in the tort system?**

9 A. Correct. If they can, if they have
10 physical impairment, severe asbestotics, I need to
11 look at the definition, but typically show sufficient
12 impairment criteria such that they would satisfy
13 medical criteria requirements or the requirements to
14 be removed from an inactive docket.

15 **Q. And on level II, they might be entitled to**
16 **compensation depending on the jurisdiction?**

17 A. And the exact -- I'd have to go back and
18 review the definition again. I mean to me, the most
19 important thing in all of this is not what the TDP
20 says. It's what the tort history has been. Leslie
21 has not compensated these types of claimants. They
22 haven't in aggregate amounted to a substantial

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1 portion of the litigation against them and the trust
2 sits in stark contrast to that by saying instead of
3 this being a very small fraction of total
4 expenditure, we are going to allow for that potential
5 to increase to 1 and \$5.

6 **Q. Let's go to the next section of your**
7 **report, which has a title, Leslie has an economic**
8 **incentive to inflate the value of its future asbestos**
9 **expenditures. And you state in paragraph 26 that**
10 **Leslie's insurance is an asset for Leslie and its**
11 **parent, CIRCOR. The value of this insurance asset**
12 **increases with Leslie's liability. What did you mean**
13 **by increasing with Leslie's liability?**

14 A. The insurance is potentially subject to
15 reimbursing Leslie for its tort losses with regard to
16 asbestos litigation. The greater those losses are,
17 the more losses there are to cede to the insurance.
18 The faster that money comes in, the faster it fills
19 up the insurance chart and the greater the net
20 present value of the payments and quite potentially
21 the greater the magnitude of the payments.

22 **Q. You go on to say, thus the greater the**

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1 **value of the insurance asset that Leslie and CIRCOR**
2 **contribute to the trust, the more credit the ACC**
3 **should give them for that contribution resulting in**
4 **lower cash contributions by Leslie and CIRCOR. Do**
5 **you see that?**

6 A. Yes.

7 **Q. Wouldn't the opposite actually be true?**
8 **The lower the claims, the more valuable the**
9 **insurance?**

10 A. No. I'm stating it -- I'm making
11 explicitly a statement that I wrote. If Leslie and
12 the ACC have agreed that the tort liability is worth
13 \$70 million, and they look at the insurance and they
14 say, hey, the insurance is worth 50, it covers 50 out
15 of the 70. If they look at the insurance and say
16 it's only worth 10, it's only going to cover 10 of
17 the 70, the more valuable that insurance asset is,
18 the greater credit Leslie gets for contributing it
19 towards payment of whatever price it's negotiated
20 with the ACC.

21 **Q. I'm not sure I followed your answer on**
22 **that one. The insurance is what the insurance is. I**

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1 **mean, there is a certain amount of insurance that's**
2 **available to Leslie at the current time, correct?**

3 A. You can't buy more insurance for the years
4 that have passed, if that's what you mean by that
5 statement.

6 **Q. And do you know how much insurance Leslie**
7 **has available to it now?**

8 A. I understand it's a bit of an open
9 question. And I've seen a representation of the
10 coverage that I think starts at some point in the 60s
11 and runs into the 80s, and is unspecific about what,
12 if anything, existed earlier in time.

13 **Q. Did you look at what it says in the**
14 **disclosure statement about the amount of insurance**
15 **available?**

16 A. I have.

17 **Q. I think it says something about \$48**
18 **million?**

19 A. And I think of it more in terms of that
20 initially there is about 110 or something in the
21 neighborhood of 135 million in aggregate limits, some
22 of which -- some of which certain insurers have

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1 asserted are exhausted, some of which may be
2 insolvent, and so only pay certain cents on the
3 dollar. I'm not sure what the 48 million number
4 you're referring to represents.

5 **Q. Do you know how much primary insurance**
6 **Leslie has available to it?**

7 A. I recall that certain policies, the
8 disclosure statement asserts, are exhausted. Others
9 aren't. I don't know exactly how many limits are
10 remaining.

11 **Q. And are you aware that primary insurance**
12 **coverage pays for defense costs and doesn't reduce**
13 **the amount of the coverage available under the**
14 **policy?**

15 A. That's not always true. I haven't seen
16 the language policy for a lot of the policies. The
17 most common outcome for a primary policy is that it
18 pays defense in addition to the limits. So the
19 defense payments don't erode. I've seen primary
20 policies where the defense payments do erode the
21 limit and I've also seen ones with deductibles or
22 self insured retentions. Whether some of those are

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1 even in the Leslie program in the latter years -- but
2 I haven't seen the language of the policy, so I don't
3 know exactly how they treat defense costs.

4 **Q. How about with the excess policy? Do they**
5 **cover defense costs without reducing the amount of**
6 **coverage available?**

7 A. Again, I haven't seen the policy language
8 so I don't know. Umbrella policies, it's probably
9 more common to pay the inside limit. I've definitely
10 seen examples where they pay defense in addition to
11 limits or they may pay no defense, so the defense
12 costs aren't covered by the insurers, and they don't
13 erode the limit. So I don't know what state of the
14 world Leslie's policies are because I haven't seen
15 the language.

16 **Q. Well, going back to your comment in**
17 **paragraph 26 of your declaration, if the future**
18 **claims against Leslie are potentially -- the 75**
19 **million that's -- taking claims history, 75 million**
20 **is the midpoint range, correct?**

21 A. Okay.

22 **Q. And we assume that there is, for a round**

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1 **number, insurance of \$50 million available to cover**
2 **those claims in the future. Wouldn't Leslie then say**
3 **to the ACC, well, I can pay you \$25 million because**
4 **you've got 50 million of insurance I'm giving you,**
5 **and so the cash that I need to contribute should be**
6 **lower than what I did pay you?**

7 A. Well, I think CIRCOR is buying more than
8 finality for Leslie, so when they say the liability
9 is 75 million, I don't think that's the only thing
10 that's involved. I mean, there is explicitly
11 channelling injunctions for CIRCOR and for Watts, so
12 there is other forms of consideration being exchanged
13 in this business transaction.

14 So the liability, I think it's
15 inappropriate to look at that as the only motivation
16 for payment because it's not the only form of
17 consideration being given. I think in general the
18 statement that if the insurance is worth 50 million
19 they will get a larger credit than if it's worth 20,
20 it's true. They should get a larger credit. It's a
21 more valuable commodity to assign 50 million worth of
22 proceeds to the trust than 30 million to the trust.

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1 That's why I said the more valuable they can make
2 that asset, the better off they are going to be.

3 **Q. But you say in your report that they**
4 **inflated what the future claims were going to be in**
5 **order -- so that they could pay less?**

6 A. Correct. I don't say they do. Let me be
7 careful. I say they have an economic incentive to do
8 that. I say here I believe the TDP forecast that's
9 put forward has inflated values. Whether the
10 economic incentive is why they have the inflated
11 values, I don't know their motivation. I know they
12 have an economic incentive. That's a pure economics
13 question, and I know that the forecast they have is
14 at least three times too big so the resultant
15 forecast is consistent with that economic incentive.

16 **Q. That's where you lose me on that one**
17 **because I gave you the one example. Let me give you**
18 **another example. Say the future claims against**
19 **Leslie are \$200 million and there is still \$50**
20 **million of insurance coverage. Now, the ACC says to**
21 **Leslie, you got to put up \$175 million or -- \$150**
22 **million.**

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1 A. No. Let me -- maybe we need to take this
2 a little bit more slowly. There is a reason it says
3 Leslie, its parent CIRCOR, and the official committee
4 of unsecured creditors or the ACC all have an
5 economic incentive to do this. Suppose all three of
6 those parties get together and they decided the
7 future liability is \$75 million. That negotiation is
8 done and over with.

9 Now they are sitting around the table.
10 They got to fund this with at least 75 million.
11 That's what they have agreed to do and they said we
12 have this insurance asset. Well, how much is that
13 worth? It's now common asset to the three of them.
14 This is an asset and the more it's worth now that we
15 have decided on a price, now we want to make that
16 asset as valuable as possible.

17 Well, if we actually cede 75 million of
18 losses, maybe the insurance is worth \$15 million.
19 But if we cede 230 million of losses, the TDP
20 forecast, then the insurance is worth \$50 million. I
21 have made those two numbers up just as an example,
22 but in terms of the 50 million of what it would be

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1 under those scenarios.

2 But they have an incentive to jointly
3 maximize and divide that pie up. Whether or not they
4 respond to that economic incentive is another
5 question, but they have that incentive. Once they
6 have agreed on a price, they want to maximize the
7 value of the asset that is not present at the table.
8 That's what they want to do. From a pure economic
9 standpoint.

10 **Q. Well, both 75 million and 230 million are**
11 **more than the value of the insurance that's available**
12 **so how would it -- if it's \$75 million in future**
13 **claims, why would insurance be worth only 50 million?**

14 A. They are not. The comparison you're
15 making just doesn't work at all. So when you think
16 of insurance, you take losses each year. You
17 allocate those to the insurance coverage under the
18 allocation rules and policies pending as those losses
19 get allocated to them. That creates a flow of money
20 through time.

21 Suppose they had exactly 75 million of
22 nominal limits relating and the losses fit perfectly

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1 in that. That never happens. Suppose it is. They
2 get 75 million paid out over the next 40 years which
3 may have a net present value of \$35 million. Instead
4 they now say it's 230 million, so we fill that up in
5 the next five years. So instead of getting 75
6 million paid out over 40 years, they now get 75
7 million paid out in the five years. Over five years
8 it might have a net present value of \$60 million. So
9 they have turned the net present value of this asset
10 from a \$35 million asset to a \$60 million asset by
11 accelerating the payments.

12 Similarly, at 75 million, there probably
13 doesn't run through all the insurance. There is
14 an -- in comparing the numbers, there is 135 million
15 of limits. My understanding is that the only limits
16 that they really tapped into are the primary when I
17 read through things. There may be some excess
18 policies that have paid, but I didn't see that.
19 There is much more than \$50 million of limits in
20 their excess program.

21 Admittedly lots of it may be insolvent but
22 Leslie has to stand in the shoes of those insolvents

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1 before it can get to the insolvent policies on top.
2 They don't just get skipped. So it actually does
3 take a little more than \$75 million to access all of
4 that insurance. So the only way they get to the
5 value they are talking about is by having a number
6 substantially larger than 75 million.

7 **Q. What does it mean when the -- when you say**
8 **that Leslie is -- Leslie and CIRCOR are contributing**
9 **the insurance to the trust? How are they doing it?**

10 A. My recollection is that the insurance
11 proceeds, they will contribute to the trust. I don't
12 think they are technically assigning policies.
13 That's my recollection.

14 **Q. What does that mean to you, that they are**
15 **assigning proceeds?**

16 A. My understanding is Leslie and CIRCOR will
17 go presumably in either voluntarily or through a
18 coverage action with its insurers, will come to a
19 determination of what the insurers owe for the
20 asbestos losses and whatever moneys flow in will get
21 turned over to the trust.

22 **Q. So in this case, assuming the trust gets**

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1 **approved, the insurers will be in the same position**
2 **in terms of paying claims as they would be in the**
3 **tort system? They would only pay as they come? They**
4 **are not contributing the entire value of their**
5 **policies to the trust, are they?**

6 A. Well they very much won't be in the same
7 position. They aren't litigating in the tort system.
8 They don't have available the tort defenses. They
9 are not having claims resolved through trust
10 distribution procedures. There is a very different
11 resolution mechanism than the tort system. Prior
12 trusts pay substantial sums to nonmalignant claims.
13 That's in their financials. Current tort defendants
14 don't. It's a very different resolution mechanism.

15 So saying they are in the same position is
16 a gross mischaracterization. They are in a very,
17 very different position. It presumes values. The
18 tort system doesn't presume values. It doesn't say
19 check these three boxes, get \$140,000 or get \$100,000
20 scheduled value. It says, no, each claim has got to
21 be judged on its own merits based on their own
22 characteristics, so they are not in the same position

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1 at all. There has been a big change in how the cases
2 will be resolved.

3 **Q. And the amount of defense costs is going**
4 **to be substantially lower as well, right?**

5 A. Presumably.

6 **Q. And if the numbers in the disclosure**
7 **statement are correct, that's double the amount that**
8 **the insurance companies were paying in the context of**
9 **the tort system? If you look at claims paid versus**
10 **defense costs?**

11 MS. DAVIS: Objection.

12 THE WITNESS: The numbers that we went
13 through in the disclosure statement showed
14 substantially less defense dollars than indemnity
15 payments.

16 BY MR. DORSEY:

17 **Q. Have you done an analysis to determine**
18 **whether taking into account what the insurance**
19 **companies have paid in defense costs and paid in**
20 **indemnity claims over the past five years, and then**
21 **compare that to what the insurance companies might**
22 **have to pay in the trust scenario if the trust gets**

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1 **approved, have you looked at what the difference**
2 **would be in terms of whether they are better off or**
3 **not in the tort system versus the trust?**

4 A. It's an interesting question. I haven't
5 specifically gone to do that. They have fewer
6 options available to them. They don't have control
7 over the defense any longer. How the defense costs
8 would have proceeded in the tort is a very
9 interesting question to me because I find it unlikely
10 that they would continue trying cases on a regular
11 basis in California against the plaintiff's bar if
12 they kept winning.

13 So if their tort history kept persisting
14 where they were getting defense verdicts on seven out
15 of eight and paid half a million if they did get hit
16 with a verdict, I don't think they would continue
17 trying cases. I haven't analyzed that. You can
18 imagine defense costs will come down substantially
19 once they establish what their defense costs are.
20 They ramp up defense costs, establish defenses, which
21 is expensive. Once they are established, they are
22 easier to maintain, and then they can bring them down

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1 a bit. That's a likely pattern for how they would
2 have played out.

3 So would they have continued to have such
4 a large ratio of defense to indemnity? Probably not.
5 If we are going to assume that they did, assume it
6 was two to one, then you can run out the numbers and
7 do an assessment and it's going to depend a lot on
8 the policy language in the chart for what's the
9 treatment of defense costs on a policy by policy
10 basis.

11 **Q. And what's the basis for your knowledge**
12 **about how defense costs compared to indemnity costs**
13 **in the tort system over a long period of time?**

14 A. I have seen at least 50 and probably
15 closer to 100 different companies claims data, both
16 defense and indemnity, and I've had the ability to
17 observe that and see the patterns that appear across
18 them.

19 **Q. And how long does it usually take to**
20 **develop a pattern where defense costs begin to come**
21 **down?**

22 A. There is usually a -- it varies. It

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1 depends on how successful they are. The more
2 successful they are, they will probably come down
3 faster. It's usually three to five years.

4 **Q. How long has Leslie been in the tort**
5 **system defending claims?**

6 A. Well, my three to five-year statement, if
7 we go back, is in reference to from when they ramped
8 those defenses up, so they really started ramping
9 their defenses up materially in 2006. They went from
10 2.2 million in '05 to almost 6 million in '06 and
11 they have been in the neighborhood of 10 million in
12 '07, '08, and '09, so they have been at that level
13 running around 10 million with some growth for four
14 years now. And they have been fairly successful.
15 They have been winning verdicts.

16 I said the big driver is probably going to
17 be how many more cases do they need to keep trying
18 but I didn't specifically go off and estimate that.
19 I viewed my task as, are the liquidated values which
20 my understanding in the TDP are supposed to represent
21 Leslie's several share of the indemnity due to those
22 claimants, are those values reasonable. And no, they

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1 are not. If you're asking a different question of if
2 you transfer all the defense costs to the plaintiff,
3 that's a different question. If what the liquidated
4 values are supposed to represent are Leslie's several
5 share of the indemnity payment to the plaintiff, it
6 is an unreasonably high value if that's what it's
7 intended to capture.

8 **Q. When you say you viewed your task as "are**
9 **the liquidated values, which my understanding in the**
10 **TDP are supposed to represent Leslie's several share**
11 **of the indemnity due to those claimants" where did**
12 **you get the understanding that that was your task?**

13 A. Well, my -- I was looking -- one of the
14 things I was asked to look at is, are these
15 reasonable settlement values. Were the values being
16 assigned to these claims reasonable based on Leslie's
17 tort history. I view that as when I go to what's the
18 potential impact of the trust on the insurers if the
19 values that are being assigned claims under the trust
20 are at least three times -- or in terms of the money
21 flows, probably three times in terms of the values,
22 at least 50 percent higher than they would have had

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1 to pay compensable claims in the tort system, that
2 would have an adverse effect on them if those values
3 are viewed as reasonable and binding.

4 Those values overstate what the tort
5 liability would be and I was asked to say what could
6 be the impact of this trust on the insurers. And one
7 impact would be the claim values have been inflated.

8 **Q. Is there anything in the TDP or the trust**
9 **or the plan that says insurance companies have to pay**
10 **TDP values for indemnity on this claim?**

11 A. I don't know if there is anything one way
12 or the other. I haven't gone through every line in
13 detail. I assume there to be some form of neutrality
14 language worked into it and this will be put forward
15 as a reason for why it potentially doesn't need to be
16 addressed here.

17 **Q. What did you mean it doesn't need to be**
18 **addressed here? What doesn't need to be addressed**
19 **here?**

20 A. The TDP values, in my opinion, are
21 unreasonably high relative to its tort history.
22 Depending on what the purpose of the TDP is, you

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1 know, historically parties have dealt with that in
2 different ways. As I said, without going back
3 specifically, my -- most of these prepacks that I've
4 seen in the past have put in insurance neutrality
5 language. And the proponents of the plan have argued
6 that whether these are reasonable or not is a fight
7 for another day. It doesn't need to be a fight
8 within the bankruptcy and now we'll talk about
9 insurance neutrality language. But it won't say they
10 don't bind. It will typically leave open the
11 possibility that they could, but that's subject to
12 adjudication another day, but it doesn't say they
13 don't bind.

14 **Q. So you're familiar with insurance**
15 **neutrality language in the trust agreement?**

16 A. I have seen numerous of the trusts. I'm
17 generally familiar.

18 **Q. And in your experience, have those trusts**
19 **been approved by the court, the bankruptcy court?**

20 A. They have been, the trusts have varied.
21 Most eventually get approved.

22 **Q. What's your understanding of the insurance**

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1 **neutrality language?**

2 A. I have a broad understanding. I don't
3 know the specifics or nuances of it, but the -- and
4 it takes various forms, but my broad understanding is
5 that the TDP or those values may not be viewed as
6 binding. The adjudication by the trust may not be
7 viewed as binding. It also may be viewed as binding.
8 And those are defenses the insurer could raise
9 subsequently. There is kind of a long windy history
10 of all of this, and the arguments the various parties
11 have made, but it doesn't preclude typically the
12 policy, although they are arguing that the values are
13 reasonable.

14 **Q. And you did not look at the plan in the**
15 **trust agreement to see whether there was in fact**
16 **insurance neutrality language?**

17 A. I read through it quickly. It's not what
18 I was focused on. I probably did see the language,
19 but to the degree it's there, it doesn't stick out
20 specifically in my mind.

21 **Q. If it was there, would it surprise you**
22 **that the insurance companies are fighting over TDP**

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1 **values?**

2 MS. DAVIS: Objection. He is not here as
3 an insurance expert or to opine about insurance
4 neutrality.

5 BY MR. DORSEY:

6 **Q. You can answer.**

7 A. In my experience, it doesn't surprise me
8 at all. I've seen in different contexts the other
9 side after these are confirmed and I've seen the
10 proponents of those plans subsequently argue that
11 those values should be binding, and that courts have
12 ruled on them and put forward various different
13 arguments and try to use the bankruptcy ruling as
14 what I would describe as leverage in pushing the
15 settlement discussions. So it doesn't surprise me
16 that the insurers would fight against that.

17 **Q. Have you seen any coverage litigation**
18 **where that issue has been decided by a court?**

19 MS. DAVIS: Objection. Beyond the scope.

20 THE WITNESS: I'm aware of, for example,
21 Fuller Austin, those rulings. My other context of
22 this is typically in cases that have eventually

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1 settled without any court ruling on the matter one
2 way or the other.

3 BY MR. DORSEY:

4 **Q. And what's your understanding of the**
5 **Fuller Austin rulings?**

6 A. That doesn't relate so much to the TDP.
7 That's the estimate of total liability and that the
8 estimate of total liability is not a court decision
9 that's binding on the insurers and payable at the
10 time of the ruling.

11 MS. DAVIS: Can we take a break?

12 MR. DORSEY: Sure.

13 (Recess.)

14 BY MR. DORSEY:

15 **Q. Dr. Mullin, did you discuss your testimony**
16 **with anyone during the break?**

17 A. No specific piece of testimony.

18 **Q. Did you talk about your testimony at all?**

19 A. There was a discussion just to -- I would
20 describe it as a reminder that I don't give legal
21 opinions.

22 **Q. Okay. And was it in the context of**

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1 **anything in particular?**

2 A. Not in particular.

3 **Q. Have to do with insurance neutrality?**

4 A. Not in particular.

5 **Q. Going back to your report, or your**
6 **declaration, page 11. This -- you have a caption at**
7 **the very top of the page, CIRCOR receives substantial**
8 **benefits under the plan. And in paragraph 27, you**
9 **describe how by paying \$75 million, the debtor and**
10 **CIRCOR are actually overpaying for the potential**
11 **future liabilities, is that a fair statement?**

12 A. I think they are overpaying relative to
13 the indemnity due to the plaintiffs.

14 **Q. And again, by indemnity, you're referring**
15 **only to the potential costs of paying claims as**
16 **opposed to defense costs, correct?**

17 A. Much broader than that. By indemnity, I'm
18 constraining myself to the likely -- the value of the
19 likely future indemnity payments excluding defense
20 costs, but I'm also excluding stock takeover
21 premiums. I'm excluding any costs they may face in
22 terms of their financing on their debt. Excluding

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1 any distraction of senior management. All the types
2 of reasons that companies make business decisions to
3 do things, all of those are being excluded so it's
4 just indemnity relative to the payment.

5 **Q. Got you. And then in paragraph 28, you**
6 **say a reason CIRCOR may be willing to pay this**
7 **premium is that it accrues additional benefits beyond**
8 **the enterprise value under the Leslie plan. In**
9 **particular, CIRCOR itself and Watts Water**
10 **Technologies, Inc., ("Watts") whom CIRCOR has**
11 **indemnified against certain future asbestos related**
12 **liabilities. Both obtained 524(g) relief under the**
13 **proposed plan. This relief is a major consideration**
14 **for CIRCOR. Did I read that correctly?**

15 A. I believe so.

16 **Q. You say a reason. Are there other reasons**
17 **that CIRCOR might be willing to pay a premium?**

18 A. I don't know all the reasons that CIRCOR
19 may. As I said, getting finality provides them many
20 potential benefits. I haven't gone and tried to
21 quantify all of these potential benefits, but as I
22 said, there are -- it eliminates having to deal with

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1 the asbestos litigation for management. It
2 eliminates any influence this may have on their
3 credit rating and their ability to get financing. So
4 there is that sense of finality is typically valued
5 by the stock market and that has value to them. And
6 that's just the primary one that I'm focusing on here
7 because that's something that's explicit under the
8 plan.

9 **Q. Is it correct that companies that are**
10 **facing potential asbestos liabilities have difficulty**
11 **or have an increase in the cost of their capital?**

12 A. That's a company specific question. It's
13 frequently the case. You can read the analyst
14 reports. You can go look and see whether that's
15 there or not. If there is a company that does 10
16 billion a year in revenue and it pays 10 million a
17 year in asbestos litigation, it probably doesn't have
18 an influence on their financials. So if you say,
19 does this influence Exxon, probably not. If you look
20 at ones where it's a substantial portion of the cash
21 flow, it more typically does.

22 **Q. And could it also affect the ability of a**

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1 **corporation to do restructuring of its corporate**
2 **entities?**

3 A. Yes.

4 **Q. And you go on to say that you looked at a**
5 **press release that was issued by CIRCOR in which --**
6 **or excuse me, the 2009 annual report of CIRCOR that**
7 **says, "upon exhaustion of its primary layer of**
8 **insurance, Leslie may be required to bear an ever**
9 **greater share of indemnity and defense costs which**
10 **would have a material adverse effect on CIRCOR's**
11 **financial condition consolidated results of**
12 **operations and consolidated cash flows." Do you see**
13 **that?**

14 A. I see where you're referring to.

15 **Q. Is that a reasonable assumption on the**
16 **part of CIRCOR in the context of potential asbestos**
17 **tort liability?**

18 A. I think for them in particular, because
19 when you look at their insurance coverage program, my
20 recollection is that much of their umbrella insurance
21 is insolvent. So when they transition from their
22 primary insurers to their umbrella insurers due to

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1 the insolvencies, in that umbrella layer, a much
2 larger fraction of the expenditure will drop to their
3 bottom line instead of being reimbursed by insurers.

4 **Q. You go on in paragraph 29 to say, had**
5 **Leslie remained in the tort system and benefited from**
6 **a downward movement in its asbestos expenditures, the**
7 **benefit of that movement would have been shared with**
8 **its insurers and capped at their current reserve. In**
9 **contrast, had Leslie remained in the tort system and**
10 **suffered an adverse movement in its asbestos**
11 **expenditures, almost all of that increase would have**
12 **been borne by Leslie and CIRCOR. What do you mean by**
13 **that?**

14 A. Well, there is kind of an asymmetry in the
15 risk function, so when you look at a company in its
16 insurance profile and I'll just use round numbers.
17 These won't map perfectly, but if you had a company
18 with exactly 100 million of insurance and suppose you
19 had no insolvencies at all, just to take the simplest
20 examples to start with the 100 million and you had a
21 forecast that said you were going to have exactly 100
22 million of losses, and insurers were going to pay all

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1 of them, suppose that was the world in which you
2 lived. Clearly anything above the 100 million
3 adversely affects the company because they are out of
4 insurance and they pay it.

5 Now, a favorable development to the tort
6 is all the funds come down because they were paying
7 the first hundred million, the company pays
8 everything afterward. This case isn't that simple
9 but the same concept is there. There is 135 million
10 of insurance limits. The insurers collectively are
11 paying a portion of that 135 million, but they are
12 not paying anything outside of it.

13 So if you're within that 135, which I
14 believe they are, then downward shocks accrue
15 disproportionately to the insurers as opposed to the
16 company. As you start to go above 135 million, then
17 you are going into worlds where there is no more
18 insurance, so it's being borne by the company. When
19 you have insolvencies and allocation, the lines get
20 blurred but the concept is the same as kind of the
21 more simple example I started with.

22 **Q. What's the basis for your saying that if**

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1 **there is \$135 million of insurance, but a portion of**
2 **that is insolvent insurance coverages, that Leslie**
3 **has to incur liabilities up to the amount of the**
4 **insolvent portion of the insurance before it can go**
5 **into the solvent excess carriers?**

6 A. I've done an awful lot of allocation work
7 in coverage litigation, and I'm unaware of any
8 allocation in which if a whole band of umbrella
9 insurance is insolvent and there is a solvent policy
10 above it, that you can just skip all of it, and in
11 some way, even if it's all sums, you have to go up .
12 through the one tower. You may not have to incur all
13 of it. So under New Jersey, under pro rata, time on
14 risk, it just flows straight through them. If you
15 have an all sums type ruling, you can avoid some of
16 the insolvencies but you still can't avoid all of
17 them.

18 **Q. What if the insolvencies are at the same**
19 **level of excess coverage as those that are solvent?**

20 A. This is going to depend on the
21 jurisdiction now, or the choice of law that would
22 affect the coverage. So if you had all sums, the

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1 policyholder could pick and choose and at least for a
2 while defer getting into the insolvencies. Usually
3 they can't defer forever. If it's anything that's
4 based on a pro rata scheme, then it's going to be
5 spread across, and if they are at the same level, a
6 lot of it's going to go into the insolvent policies
7 and some will go into the solvent policies.

8 **Q. And which jurisdictions are which? Are**
9 **you aware?**

10 A. Complicated question. Some jurisdictions
11 probably have a consensus opinion within, what I
12 talked about, policyholder and insurer counsel.
13 Others are very open and debated. So New Jersey law
14 has the Carter Wallace ruling, as other rulings that
15 have clarified, that are time and risk weighted by
16 limits. New York is generally viewed as pro rata
17 time on risk. Some would contest that. California
18 may be viewed as all sums by many, but even the
19 interpretation is very fuzzy. Not all states, there
20 is clarity as to what's going on.

21 **Q. And am I correct, you haven't looked at**
22 **the policies or what level the excess carriers are in**

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1 **terms relevant to each other in order to determine**
2 **how the allocation is, correct?**

3 A. I have seen a policy chart, so I have a
4 feel for that, but I haven't seen the exact policy
5 language.

6 **Q. What was the chart that you saw? Where**
7 **was that?**

8 A. I believe it was the chart prepared by
9 Dickstein.

10 MS. DAVIS: Can we go off the record for a
11 second?

12 (Discussion off the record.)

13 BY MR. DORSEY:

14 **Q. Did you do an analysis of the coverage to**
15 **determine whether -- how the allocation would work**
16 **with regard to the insolvent excess carriers?**

17 A. That would be a function of the choice of
18 law. Once you have a choice of law, the math
19 follows.

20 **Q. I was asking, did you do that? Have you**
21 **done that analysis?**

22 A. Have I done -- have I looked at how

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1 different allocations would flow through?

2 **Q. Yes.**

3 A. I have looked at a few.

4 **Q. In connection with this case?**

5 A. I've looked at -- in terms of specifically
6 looking at Leslie?

7 **Q. Yes.**

8 A. I have looked at how dollars would flow
9 under different choices of law.

10 **Q. And what were the conclusions that you**
11 **reached?**

12 A. They are exactly what the math dictated,
13 so if you get a pro rata time on risk, it's going to
14 stay in the insolvent umbrella carriers for a long
15 time, because there is no collapsing in, and a very
16 large fraction of the liability after you get out of
17 the primary would go to the policyholder and it would
18 depend on what people believe were the solvency
19 percentages or the payment rates coming out of the
20 various insolvent carriers would have a lot to drive
21 it.

22 If you pick something like New Jersey law,

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1 it stays more in the chart because it's proportional
2 to the limits. So it -- a little bit less would be
3 borne, but still the majority would be borne by the
4 policyholder, in this case Leslie. I don't think I
5 looked at all sums. You can visually look at it, but
6 I don't think I ran anything to see what it looked
7 like.

8 **Q. Did you prepare a written analysis?**

9 A. No.

10 **Q. Did you take notes or prepare anything**
11 **that shows how you came to these conclusions?**

12 A. No.

13 **Q. Did you discuss them with counsel?**

14 A. In broad brush strokes, how the different
15 choices of law would cause the dollars to flow
16 through, similar to the discussion I just had with
17 you.

18 **Q. When you did that presentation, did you**
19 **have anything in front of you?**

20 A. No.

21 **Q. You did it off the top of your head?**

22 A. When you've done enough of them, you can

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1 talk through a policy chart and talk through it.

2 **Q. Can you tell me what you told counsel**
3 **about the allocation issue?**

4 A. I more just walked through what the impact
5 would be in different places. And so under pro rata
6 time on risk claims, it's going to take a longer time
7 to move up through the chart. So the policies would
8 be less valuable under that choice of law than if you
9 had a choice of law like Carter Wallace that weighted
10 limits that would move up more quickly because
11 everything stays inside the chart. That would
12 increase the value of the insurance. And if you went
13 to something like all sums among those three, that
14 would maximize the value of the insurance relative to
15 the other two.

16 **Q. And did do you an analysis of which one of**
17 **those was the most likely allocation that would occur**
18 **in this case?**

19 A. That's outside of my expertise, choosing
20 which choice of coverage law the court will deem most
21 appropriate.

22 **Q. Is there a reason why you didn't do the**

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1 **all sums amount?**

2 A. I can look at a chart and I can tell what
3 happens under all sums. All sums pick and choose,
4 you're trying to prognosticate what the policyholder
5 will pick and choose, so there is no one given
6 answer. So usually I more speak to that than try to
7 do anything explicit.

8 **Q. When you made that presentation to**
9 **counsel, did counsel take notes about what you were**
10 **talking about?**

11 A. I don't know.

12 **Q. Was it in person or over the phone?**

13 A. I think presentation kind of overstates.
14 There was a dialogue at one point where we discussed
15 potential choices of law, but that was -- that was
16 it.

17 **Q. What did you talk about with regard to the**
18 **potential choices of law?**

19 A. Potential choices of law?

20 **Q. Yes.**

21 A. New Jersey was a likely choice is the
22 piece that I recall from it.

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1 **Q. Why was New Jersey the likely choice?**

2 A. I don't remember the specifics. It wasn't
3 that relevant to me as to what the exact motivating
4 reason was.

5 **Q. And what was New Jersey's position again**
6 **on allocation?**

7 A. Pro rata proportional to policy limits
8 follows Carter Wallace Owens Illinois rules.

9 **Q. And how would that affect the allocation**
10 **of the excess coverage in this case?**

11 A. It would be done pro rata time on risk
12 weighted by limits, so that means the policyholder
13 does stand in the shoes of all the insolvent
14 policies. And so in that case, the policyholder
15 would be bearing a substantial portion of the
16 expenses as it got out of its primary and went into
17 those insolvent policies.

18 Eventually, it may have enough losses to
19 get through those umbrella policies. It may not. If
20 it does, then it would start going into the excess
21 policies that are above them where they exist. And
22 where they don't, they would fall 100 percent to the

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1 policy if there was no excess above the umbrella.

2 **Q. So when you did your analysis in**
3 **paragraphs 29 and 30 as it relates to the benefits to**
4 **CIRCOR and the potential down side for the insurers,**
5 **which analysis were you looking at in terms of the**
6 **allocation of the policies?**

7 A. It doesn't really matter. It's always
8 true. The insurance, there is a level of expenditure
9 for which insurance will be a partial offset to the
10 losses incurred by the policyholder. There is an
11 expenditure level above that regardless of the choice
12 of law in terms of how the coverage is done. There
13 is a level of expenditure for every given choice of
14 law that once you get above that, it's going to be
15 100 percent borne by the policyholder because there
16 is no insurance remaining.

17 There is always this asymmetry in the
18 risk. Insurers disproportionately benefit from
19 downward movements in liability and the policyholder
20 disproportionately incurs the cost of upward
21 movements, so their options on this are very
22 different if you think of it on option pricing.

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1 Insurers have a valuable option that someone would
2 pay to take from them, while the policyholder has an
3 option they would be willing to pay somebody to get
4 rid of.

5 **Q. So in all of the cases that you're aware**
6 **of where a trust has been established, that same**
7 **scenario would apply, the upside risk is on the**
8 **insurance companies in the context of the trust?**

9 A. The upside risk is -- I mean, it depends
10 where you are. So if you're not, if you're in a
11 world where you have 100 percent solvent insurance
12 and you have a billion of insurance, and the
13 liabilities are projected to be \$50 million, if they
14 triple, and it's 150 million, it's still all of the
15 insurance, so it would have to go up by so much that
16 from an economic perspective, although the asymmetry
17 exists, it would be immaterial, because unless you
18 thought you were going to break a billion dollars,
19 the policyholder would not face that down side risk
20 in reality.

21 There is other places if you take somebody
22 like Owens Corning, my understanding was they had

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1 gone through all their aggregate insurance limits
2 before they filed for bankruptcy. Their insurance is
3 gone. So Owens Corning bears both the upside and
4 downside. So when insurance exists and when you're
5 in a scenario where you're likely to not go through
6 all the insurance, but in downside scenarios you
7 could go through all the insurance and more, if
8 that's a world in which you're in, then this
9 asymmetry exists.

10 **Q. Did you look at the question of whether or**
11 **not on the downside scenarios in this case, that it's**
12 **more likely that the insurance would not be**
13 **exhausted?**

14 A. I think there is when I look at 135
15 million of limits, they are basically in their
16 primary right now, and future costs of about 75
17 million, you wouldn't go through all of it. And
18 there is less indemnity there than there are
19 insurance limits.

20 **Q. But you don't know what the primary is?**
21 **You don't know how much the primary covers?**

22 A. Even if I only look at the umbrella and

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1 excess and look at the limits, I believe it's in
2 excess of \$75 million.

3 **Q. And have you done analysis to determine**
4 **whether -- assuming the trust pays only claims that**
5 **are valid as having been presented to them, pursuant**
6 **to what's required for getting paid under the TDP,**
7 **whether the insurance would be exhausted?**

8 A. I mean, I have not tried to come up with
9 my own prediction of how the specifics in the TDP are
10 going to be enforced or who constitutes a valid claim
11 under those criteria. There is no history for that.
12 The history is what's a valid claim in the tort
13 system. The trust you're asking somebody to take a
14 set of rules and the best indicator of that is what
15 other trusts have done in the past, but this is the
16 Leslie Controls trust. It is distinct from the other
17 ones, but there is no history outside the tort
18 history that's Leslie specific.

19 So I can answer for you if they only paid
20 the claims that would have been compensable under the
21 tort system. Whether the rules in this trust pay
22 half of those claims so the tort system would have

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1 paid 75 and this will only pay 35 a year, or whether
2 this is going to pay 300 a year, that's an open
3 question.

4 I looked at the forecast that was put
5 forward that said it's going to pay out 230 million
6 and it's going to pay more claims and that was what
7 was done by ARPC. And I assumed that that was their
8 task is what's this trust actually going to do. If I
9 look at that, yes, then it's paying too many claims
10 and it's going to go through, if you looked at 230
11 million under a Carter Wallace allocation to 135
12 million of insurance, it will go through the whole
13 insurance. In contrast, if you look at 75 million,
14 it won't, which puts us in exactly the situation
15 described in paragraph 29 and 30.

16 **Q. Is it true that once companies go out of**
17 **the tort system and they establish trusts that the**
18 **claims against the trusts tend to be -- there tend to**
19 **be more claims against the trust than there were**
20 **against the company when it was in full existence?**

21 A. Interesting question. Most of the trusts
22 aren't very public with that data, so the question to

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1 the general population is unknown. The only context
2 in which I have seen trust data are subject to
3 confidentiality, so I don't think it's appropriate
4 for me to tell you what I've seen in those contexts.
5 I have seen some trust data.

6 So you can -- it's more looking at them
7 from the context of what is in their annual reports.
8 Can you draw some inferences between what's in their
9 annual reports. The amount of money they are paying
10 and how that relates to what solvent tort defendants
11 are doing. There is discrepancies between what
12 trusts consider compensable and what the tort
13 considers compensable in the trusts that are
14 currently running.

15 **Q. Using publicly available data, have you**
16 **drawn any conclusions about whether claims against**
17 **trusts go up as compared to what they were?**

18 A. There is -- they do. You can see it most
19 clearly in nonmalignant claims. Nonmalignant claims
20 is the clearest example when you look at the amount
21 of moneys being paid to them from the trust and from
22 that, you can back up the number of claims because

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1 you know what the average value is for nonmalignant
2 values. 40 to 45 percent of the money over the last
3 couple of years have been going to those nonmalignant
4 under those trusts, according to the Rand report.

5 That shows you the trusts are not
6 mimicking the tort system. At a much more general
7 level, the trusts allocate very little money to due
8 diligence on claims, so it's a very different
9 process. You wouldn't expect the same outcome. The
10 one is much more adversarial with large resources
11 spent to defense. The other one is not. So you
12 wouldn't expect those to produce the same outcome.
13 You'd expect them to produce different outcomes.

14 **Q. Looking to the last page of your report,**
15 **or your declaration, the last sentence of paragraph**
16 **31, you say, although paying a premium in order to**
17 **limit CIRCOR's downside may be a sound business**
18 **decision for CIRCOR, the TDP figures do not reflect**
19 **Leslie's tort liability. Do you believe it was a**
20 **sound decision to pay a premium in order to limit?**

21 A. I believe companies in general buy
22 insurance for lots of reasons. This can be thought

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1 of as like an insurance product. They are getting a
2 524(g) channeling injunction that says you'll never
3 face liability for this. It can be similar to buying
4 a very large insurance policy and paying a very large
5 premium for it. Doesn't mean the liabilities are
6 coming, but if they did, it will give you peace that
7 you don't have to pay anything for them.

8 Companies make risk decisions all the time
9 about when they might want to pay a premium to get
10 rid of a risk and how likely they think that risk is.
11 It's reasonable for companies to do those
12 assessments. So as a general concept, people buying
13 insurance paying above their expected liabilities to
14 get insurance, that's a reasonable business decision
15 that manifests in all sorts of contexts in business.

16 People hedge exchange rate risk. People
17 buy insurance products explicitly. They do all sorts
18 of things, so that is reasonable. Whether the
19 premium they paid was a reasonable amount or not a
20 reasonable amount, I don't know enough about the
21 internal workings of their business to say whether
22 paying 35, 40 million premium to get that finality

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1 was a good or bad thing. They are going to have done
2 their own internal assessment and clearly they
3 thought it was. They decided to do it.

4 **Q. Take a look at Exhibit A to your**
5 **declaration. This is your curriculum vitae, is that**
6 **correct?**

7 A. Yes.

8 **Q. At the bottom of the first page, you have**
9 **a section that's listed as selected experience.**

10 A. Correct.

11 **Q. Why did you include only selected**
12 **experience as opposed to all of your experience?**

13 A. Some of my experience, I'm not allowed to
14 talk about. Some of -- some of this, I'm sure I've
15 omitted over the years just because I can't remember
16 it at this point. But the specific thing is there is
17 certain things I've done under confidentiality where
18 even the fact that I've retained is confidential.

19 **Q. Would it be fair to say that this is --**
20 **let me strike that.**

21 **Would there be a way to describe the**
22 **things you've been retained for on a confidential**

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1 **basis without actually disclosing confidential**
2 **information?**

3 A. In broad brush strokes.

4 **Q. What are the things that aren't on here**
5 **that would be confidential that you can describe in**
6 **broad brush strokes?**

7 A. I've done work on behalf of potential
8 purchasers of companies, could be hedge fund, could
9 be private equity funds. Could be one corporation.
10 Somebody is interested in buying another party and
11 I've been retained to do due diligence with regard to
12 the potential liabilities that the target entity may
13 have.

14 **Q. Anything else?**

15 A. I've been retained in settlement,
16 exclusively for settlement on some matters.

17 **Q. What kind of claims?**

18 A. Different claims. Sometimes asbestos.
19 Sometimes it's insurance. Sometimes it's something
20 outside of asbestos, something like environmental
21 liability. Something else.

22 **Q. When you've been retained in those types**

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1 **of cases, who are you typically retained by? Is it**
2 **insurance companies or companies?**

3 A. It varies. I'm retained both by
4 policyholders and insurers in a coverage litigation
5 context. In a bankruptcy context, I'm retained by
6 debtors, unsecured creditors, equity committees,
7 different constituencies. In that framework, they've
8 retained myself or my firm. Both in expert roles and
9 in consulting roles.

10 **Q. I was just curious. You have under**
11 **professional associations, you're a member of the**
12 **American Bar Association?**

13 A. I always get asked that question. Yes, I
14 am.

15 **Q. How did you become a member of the**
16 **American Bar Association without becoming a lawyer?**

17 A. You write them a check. Anybody willing
18 to write the check can join.

19 **Q. What is the American Law and Economics**
20 **Association?**

21 A. American Law and Economics Association is
22 largely law professors and economics professors in

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1 academic association, principally. It runs
2 conferences. It reviews -- it publishes papers. It
3 runs a journal, academic journal.

4 **Q. Are you familiar with Professor Priest**
5 **from Yale University?**

6 A. I recognize his name.

7 **Q. Have you ever had conversations with him?**

8 A. I don't believe so.

9 **Q. Are you familiar with a company called**
10 **Litigation Resources Group?**

11 A. No. But I think I know what you're trying
12 to refer to.

13 **Q. What do you think I'm trying to refer to?**

14 A. Litigation Resolution Group.

15 **Q. Resolution Group. Okay. You're familiar**
16 **with that company?**

17 A. That company I'm familiar with.

18 **Q. You're a principal in that company?**

19 A. Correct.

20 **Q. Is there a reason it's not listed on your**
21 **curriculum vitae?**

22 A. Probably largely because it's a startup

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1 company that's trying to be successful.

2 **Q. When did you start that company?**

3 A. I think about three years ago at this
4 point. I'm not sure on the exact date.

5 **Q. And what does Litigation -- I'm just going**
6 **to call it LRG, if that's all right?**

7 A. That's fine.

8 **Q. What does LRG do?**

9 A. It tries to facilitate business
10 transactions for entities facing liabilities.

11 **Q. When you say business transactions, what**
12 **kind of transactions are you talking about?**

13 A. It varies, depending on the entity's need.
14 So probably I could give you a couple of concrete
15 examples. Suppose a company wants to do an IPO and
16 it wants to create comfort that some set of
17 liabilities aren't that dangerous and give comfort to
18 the banks and the potential purchasers. Litigation
19 Resolution Group may try to place for them some type
20 of indemnification, capped indemnification, some type
21 of signal to the market about what those liabilities
22 are likely to be, so there is a third party credible

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1 signal to potential investors as to the likely range
2 of those liabilities that facilitates the exchange of
3 information in a credible manner, in essence.

4 **Q. Do you do work with companies that are**
5 **facing potential asbestos liabilities?**

6 A. I would.

7 **Q. Do you advertise the company as someone,**
8 **as a company that can deal with potential asbestos**
9 **liabilities on behalf of a company?**

10 A. Yes. It's capable of doing that.

11 **Q. Is it something you advertise?**

12 A. I think so. I don't remember exactly what
13 all is on the website.

14 **Q. Okay. What's your position with LRG, by**
15 **the way?**

16 A. I'm a principal within it, one of the
17 founders.

18 **Q. Is it a partnership or LLC?**

19 A. It's an LLC.

20 -----

21 (Exhibit 3 marked.)

22 -----

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1 BY MR. DORSEY:

2 **Q. I've handed you what's been marked as**
3 **Mullin Exhibit Number 3. Do you recognize the screen**
4 **shot from the LRG web page?**

5 A. That looks familiar.

6 **Q. How much time do you spend working with**
7 **LRG as opposed to Bates White?**

8 A. Over the last year, I've probably spent
9 less than 5 percent of my time at LRG.

10 **Q. And if you look at the screen shot, it**
11 **says, our market. Asbestos, LRG versus 524(g). Do**
12 **you see that?**

13 A. I do.

14 **Q. And can you walk me through -- well, let**
15 **me ask you this, are you trying to present here that**
16 **your services would be superior to a 524(g) trust in**
17 **bankruptcy?**

18 A. It's different, but it's superior
19 depending on the perspective of the company. It's an
20 alternative so it's a financial instrument as opposed
21 to channelling injunction. So it has pros and cons.
22 If a company is looking for solutions -- for some

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1 companies, 524(g) would dominate what LRG can offer.
2 For other companies, LRG may dominate what 524(g)
3 could offer. But it's just pros and cons.

4 **Q. When you say it's a financial instrument,**
5 **what do you mean?**

6 A. It's a financial transaction. It's --
7 unlike 524(g), where it's a ruling from a bankruptcy
8 court with a congressionally backed channeling
9 injunction, and that's how you're getting your sense
10 of finality or your reaching, what LRG will do for a
11 client is it will quantify a litigation risk that
12 they assess. It will underwrite that litigation risk
13 and offer to take it on for a price.

14 **Q. How does it work? Can you tell me? How**
15 **would that work?**

16 A. There is no -- it's a business
17 transaction, so it's not constrained to work in any
18 one particular manner. So you can work with the
19 business needs of your client to construct a
20 financial instrument that really hedges the risk that
21 they are facing. And you can tailor it to their
22 needs.

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1 **Q. Are you buying the liabilities from them?**
2 **Is that what you're doing? Or are they selling you**
3 **the liabilities, I should say?**

4 A. Neither of those is exactly right. I
5 mean, it could go -- it can take different forms so
6 there is no one characterization. It -- as I said,
7 it depends on what a company's needs are as to what
8 form that would take.

9 **Q. Are you currently working with any**
10 **companies on their asbestos liabilities?**

11 A. No.

12 **Q. Have you in the past worked with any**
13 **companies on their asbestos liabilities?**

14 A. Yes.

15 **Q. And how many companies have you worked**
16 **with on their asbestos liabilities?**

17 A. I don't know the exact count of how many
18 we've had a meaningful interaction with. But less
19 than 10.

20 **Q. And are those less than 10 where you've**
21 **actually entered into this financial instrument that**
22 **released them of their asbestos liabilities?**

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1 A. We haven't entered into a financial
2 instrument with anybody. That's why I said it's a
3 struggling startup hoping to succeed one day.

4 **Q. And if you look at Exhibit Number 3 at the**
5 **bottom, there is a chart, and beneath the chart there**
6 **is some language that says, as evidenced by past**
7 **corporate reorganizations that involve 524(g) of the**
8 **U.S. bankruptcy code, many companies facing the**
9 **specter of legacy asbestos related claims benefit by**
10 **paying sums above the direct cost of their asbestos**
11 **litigation to obtain finality and eliminate those**
12 **direct litigation costs.**

13 A. Yes.

14 **Q. And that's pretty much what we talked**
15 **about in this case. That you believe Leslie paid a**
16 **premium above what the value of the claims are in**
17 **order to be released of those liabilities?**

18 A. I believe CIRCOR did.

19 **Q. CIRCOR?**

20 A. Yes. CIRCOR made a business decision to
21 pay above its expected costs of the liability to get
22 finality.

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1 **Q. And it goes on to say, LRG's product**
2 **offers companies an attractive and more cost**
3 **effective alternative to 524(g) that provides for a**
4 **quicker timeline to resolution and enables the**
5 **company to retain procedural control of the**
6 **litigation throughout the process. What is the more**
7 **cost effective alternative that you refer to there?**

8 A. I think we can look at that more in the
9 context of various bankruptcies that have occurred in
10 the past. I think we -- if I were to use a concrete
11 example, I think LRG in its -- would have gladly
12 taken on the liabilities of the company like USG for
13 \$2 billion instead of the 4 billion that they paid to
14 get 524(g). I think the shareholders of USG, we
15 didn't exist at that point in time, but I think the
16 shareholders of USG would have been prepared to pay
17 \$2 billion less.

18 **Q. If you took on the liabilities of USG for**
19 **\$2 billion, how would it relieve USG of its asbestos**
20 **liabilities going forward?**

21 A. In one form or another, there would have
22 been some form of, as it says in here, large capped

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1 indemnification.

2 **Q. What does that mean? What do you mean by**
3 **that?**

4 A. That means LRG would have agreed to pay
5 the next 5 billion of losses, the next 7 billion of
6 losses. Some fraction of future losses incurred on
7 USG's behalf would have been paid by LRG. And if
8 that capped indemnification is large enough, the
9 investors of USG may or may not have comfort that
10 it's not going to come back to them or they may
11 decide they want to pay 4 billion instead of 2
12 billion and have a congressional injunction. That's
13 a choice that they have. One is less expensive, has
14 some risk that it might revert. The other one is
15 more expensive and that is a congressional channeling
16 injunction.

17 **Q. Do you believe in this case, you would**
18 **have structured a financial instrument that would**
19 **have released Leslie of its liabilities at a lower**
20 **cost than the 524(g) injunction it's seeking here?**

21 A. I don't know.

22 **Q. Why don't you know?**

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1 A. I haven't done sufficient work to
2 underwrite such a transaction, so I don't know what
3 the price would be.

4 **Q. When you're underwriting those**
5 **liabilities, do you obtain insurance coverage for**
6 **them?**

7 A. I don't have to. It depends on the nature
8 of the business contract.

9 **Q. But you might seek to obtain insurance**
10 **coverage?**

11 A. I mean, in general, insurers aren't
12 issuing insurance for asbestos liabilities so it
13 would probably take a slightly different form than a
14 traditional insurance policy, but clearly we need to
15 bring forward the financial backing to cover the
16 indemnification that we are offering and so one form
17 or another the financial resources would be there to
18 cover that indemnification.

19 **Q. Now, you say in your chart above the**
20 **language that we've been looking at that LRG is**
21 **confidential, whereas 524(g) is not. How is it that**
22 **LRG can remain confidential?**

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1 A. It's confidential during the negotiation
2 phase, so I mean, where I describe the distinction is
3 if you talk to LRG and you don't want to do it, there
4 is no change in your litigation position. There has
5 been no impact. If you talk to your adversaries in
6 the litigation, so the company goes and talks to the
7 plaintiff attorneys, they are having a dialogue
8 directly with their adversaries expressing a desire
9 to go down this road. That may affect, if they
10 choose not to go forward with the litigation, what
11 their tort environment looks like. It may not. But
12 they are negotiating directly with their adversary on
13 litigation as opposed to a third party.

14 **Q. When you say it's confidential, it's**
15 **through the negotiation process, but once the deal is**
16 **consummated, it would be public knowledge?**

17 A. You mean as a publicly traded company, it
18 would virtually have to be public because they would
19 have to disclose. If it was a private company, it
20 may or may not.

21 **Q. Companies like USG, they would have to**
22 **disclose?**

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1 A. That would be a public company.

2 **Q. There is another block that says, are**
3 **insurance assets affected? LRG, no. 524(g), yes, at**
4 **risk. What did you mean there?**

5 A. As a business transaction, things can be
6 easily structured so there is no issues with
7 anti-assignments clauses. There is no issues with
8 some of the things that may cause problems from the
9 policyholders' perspective in terms of their ability
10 to access their insurance that 524(g) may cost.

11 It also doesn't create issues like what
12 are things worth under trust distribution procedures.
13 You're still in the tort system so you're still
14 valuing claims in the sort system so you have your
15 defense costs, your indemnity payments all in the
16 tort system. The world hasn't changed from the
17 insurer's perspective.

18 **Q. How would you structure in the context of**
19 **an LRG transaction, so that the issues of**
20 **anti-assignment insurance is not affected?**

21 A. There is lots of potential business
22 structures for that.

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1 **Q. What would those be?**

2 A. To get into the details, I'd end up
3 referring you to a corporate transactional lawyer in
4 that I have more of an understanding in very broad
5 brush strokes, but it can be an indemnification that
6 we issue that's above and beyond any of their
7 existing insurance.

8 So it's not -- it's a net effect that we
9 are paying. And we are just paying them. There is
10 no transfer of liability. There is no transfer of
11 insurance. We could buy the whole entity potentially
12 and so you're taking on the whole entity. You're not
13 transferring. The liabilities still reside with the
14 entity. There is lots of different structures you
15 could go down that never separate the liabilities
16 from the insurance and never assign the insurance.
17 You'd have flexibility.

18 **Q. Then you say in the next block who can use**
19 **it. You say, open to all companies, 524(g) is**
20 **restricted. What did you mean by that?**

21 A. Any company can do a business transaction.
22 There is nothing that prevents them. When I talk to

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1 corporations, there is a set of companies that view
2 524(g) as not a viable option to them. Their
3 corporate structures, their liabilities aren't in a
4 sub, so you may have somebody like GE. GE is very
5 unlikely to put itself in bankruptcy in order to
6 resolve its asbestos liabilities. It doesn't have a
7 convenient sub to place it in instead.

8 So if its only choice is putting all of GE
9 in, if we are dealing with the tort system it's going
10 to stay in the tort system while a financial
11 transaction, it could do. Other companies have a
12 very nice financial structure to facilitate 524(g),
13 so it really depends on the structure of the entity.

14 **Q. And if you look, I think, at -- the page**
15 **might be double sided. If you flip it over on the**
16 **back, there is a continuation of that page that says,**
17 **further, unlike 524(g), the LRG product can be**
18 **tailored to work with any corporate structure and its**
19 **availability is not limited by the complexities of**
20 **the bankruptcy code. Did I read that correctly?**

21 A. Yes.

22 **Q. And that's what you're just talking about**

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1 **that GE could relieve itself without having to put**
2 **itself through bankruptcy?**

3 A. Correct. Or a company that currently can
4 get rid of most of its liability by putting a sub in,
5 but also has some nonderivative liability. Might
6 have a hard time of getting rid of it under 524(g),
7 but under a financial contract, there is no such
8 limitations.

9 **Q. If you could turn to the third page of**
10 **this exhibit. This is asbestos case study summary.**
11 **LRG's clients receive certainly in regard to the**
12 **direct costs of their litigation liabilities and**
13 **relief from the indirect costs of litigation?**

14 A. Where are you?

15 **Q. Third page of the exhibit. Where it says**
16 **asbestos case study summary?**

17 A. Yes. I'm with you.

18 **Q. LRG's clients receive, certainty in regard**
19 **to the direct costs of their litigation liabilities**
20 **and relief from the indirect costs of the litigation.**
21 **Specifically, LRG assumes the financial risk and**
22 **responsibilities for managing the client company's**

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1 **liability and related litigation. This includes**
2 **handling underlying tort cases, resolving coverage**
3 **disputes with insurers, satisfying auditors for**
4 **financial reporting purposes. Do you see that?**

5 A. I do.

6 **Q. How would LRG resolve coverage disputes**
7 **with insurers?**

8 A. Really the same way the policyholder would
9 have before. They had at this point, it doesn't have
10 to be done that way, but if the company wants an
11 insurance asset to count towards its purchase price
12 of the product, then those insurance proceeds would
13 need to get collected and contributed in. Any
14 settlement compromises or things along those natures,
15 since it's being paid to LRG would be LRG's decisions
16 at that point and LRG's cost. They could pay
17 coverage counsel.

18 **Q. Have you in your work with LRG worked with**
19 **insurance companies in any capacity?**

20 A. Have I worked with insurance companies?

21 **Q. Yes.**

22 A. Yes.

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1 **Q. Which companies have you worked with?**

2 A. That's confidential.

3 **Q. Have you worked with any of the insurance**
4 **companies that you're representing in this case --**
5 **not representing, excuse me, that you're giving an**
6 **opinion for in this case?**

7 A. No.

8 **Q. Have you ever been retained as an expert**
9 **by Century Indemnity Company in the past?**

10 A. Yes.

11 **Q. How many times?**

12 A. I don't know. I'm frequently retained in
13 the context of a large joint defense group so there
14 may be technically 30 to 50 insurers that have
15 retained me, and I'm not sure how many times Century
16 appears in that context.

17 **Q. Do you have a general idea how many times**
18 **it might have been?**

19 A. It's probably I guess somewhere in the
20 range of 5 to 10 across the various joint defense
21 groups, but you know, I don't know exactly.

22 **Q. How about Winterthur Swiss Company. Have**

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1 **you worked as an expert for them before?**

2 A. I have no recollection of working
3 explicitly on their behalf. There is a very good
4 chance that they too would appear on one of these
5 lists of joint defense groups, but they have never
6 been a lead carrier that I've dealt with directly.

7 **Q. How about Yasuda Fire?**

8 A. I know they have been in some joint
9 defense groups, but again, they have never been the
10 lead carrier and I haven't worked with them directly.

11 **Q. Just to be clear, has Century been a lead**
12 **client that you've worked with in the past?**

13 A. Yes.

14 **Q. Do you have an engagement letter in**
15 **connection with your work in this case?**

16 A. I believe we do.

17 **Q. Is it a standard engagement letter you use**
18 **in other cases?**

19 A. It's very similar.

20 **Q. Is your engagement letter directly with**
21 **Century Indemnity and the other insurance carriers or**
22 **is it with --**

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1 A. I'd have to go look.

2 MS. DAVIS: I can tell you that we have
3 received one. It's not signed.

4 BY MR. DORSEY:

5 **Q. How much are you being compensated for**
6 **your work in this case?**

7 A. Bates White charges for my time and all
8 the staff's time on the case.

9 **Q. What is your hourly rate?**

10 A. My hourly rate is 625 an hour.

11 **Q. What about the staff?**

12 A. Ranges from about 160, and I'd be the
13 highest I think, highest on the staff, so probably 4
14 or 500, depending on exactly who.

15 **Q. Do you know how much time has been spent**
16 **by all of the employees at Bates White on this case**
17 **since you've started working on it?**

18 A. Probably on the order of 250 hours, 350
19 hours, something in that range.

20 **Q. Have you issued an invoice yet?**

21 A. I don't think so.

22 **Q. Do you have an idea what the overall**

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1 **expenditure would be to date?**

2 A. I think it's north of 75,000 but under
3 100,000.

4 **Q. Can we take another short break?**

5 **(Recess.)**

6 MR. DORSEY: I have no further questions.

7 Thank you very much.

8 MR. WYNER: I have a few.

9 EXAMINATION BY COUNSEL FOR CIRCOR INTERNATIONAL, INC.

10 BY MR. WYNER:

11 **Q. I'm Richard Wyner on behalf of CIRCOR. I**
12 **have a couple of questions. On page 16 of your**
13 **deposition, you talk about extrapolations that you**
14 **did that produced a range of 60 to \$90 million, is**
15 **that right?**

16 A. Correct.

17 **Q. Where are the calculations? Are they in a**
18 **file? Are they on a piece of paper? Where are the**
19 **actual underlying calculations?**

20 A. Neither. They are -- I have a piece of
21 software that I use where I can set different
22 parameters and it tells me what the cash flows look

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1 like, and what the value of those cash flows are.

2 And I can change those and it creates -- I look at
3 scenarios and I can show whatever scenarios I want.

4 **Q. And to do that, did you plug Leslie data**
5 **into that software?**

6 A. Correct.

7 **Q. And at no time have you ever printed out**
8 **any of the numbers that the software produced?**

9 A. I mean, I have, in essence, the 60 to 90
10 is really summarizing that range. So in that sense,
11 I transposed some of them as kind of book ends of
12 what you can get at 50 and 100 are when you make some
13 less probable assumptions, but I haven't printed out
14 any of the cash flows that come out of that.

15 **Q. And so you don't have any charts that show**
16 **a year by year cash flow amount, is that right?**

17 A. The software displays that for me when I
18 run a scenario, so I see that and it will show me
19 both the nominal totals and the net present value of
20 those, but unless I go through the exercise of trying
21 to save that somewhere, it goes away. It's like an
22 interactive session.

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1 **Q. And so you've never printed that out, is**
2 **that right?**

3 A. No.

4 **Q. And you have no screen shots or anything**
5 **like that?**

6 A. No. I don't have screen shots.

7 **Q. So then does the software work in coming**
8 **up with an amount by year?**

9 A. Yes. It will. It will produce a nominal
10 cash flow through time.

11 **Q. As it does each year, what does it take**
12 **into account?**

13 A. What you tell it to take into account, so
14 there is calibration parameters, many calibration
15 parameters in the software. So you can specify what
16 historical time window you want to look at that you
17 believe is representative for how many future claim
18 filings they are going to get, for resolution rates,
19 for settlement rates among the result claims, for
20 dismissal rates, what average claim values would be.

21 You can specify a calibration window. You
22 can specify what interest rate and inflation rates

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1 and these types of things you want to put in, so it's
2 got many, many parameters when you specify those
3 parameters and it produces the cash flows.

4 **Q. How many disease categories does it take**
5 **into account?**

6 A. It explicitly -- I'd describe it as five.
7 Many might describe it as four, so it has
8 mesothelioma claims, lung cancer claims, other cancer
9 claims which just means everything except lung cancer
10 and mesothelioma and nonmalignant claims. And the
11 software is capable of distinguishing between massive
12 nonmalignant claims and other nonmalignant claims.
13 That's not a particularly relevant distinction in the
14 terms of Leslie Controls, but for many others,
15 particularly those who went insolvent five plus years
16 ago, that was a relevant modeling parameter.

17 **Q. And does it come up with a number of**
18 **mesothelioma claims that it predicts would be paid in**
19 **a particular year?**

20 A. Yes. It will.

21 **Q. And then it multiplies it by predicted**
22 **settlement amount for a mesothelioma claim in that**

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1 **year?**

2 A. Correct.

3 **Q. And it does that for each of the other**
4 **disease categories?**

5 A. Correct.

6 **Q. And then it produces an annual expected**
7 **payout amount?**

8 A. Per year.

9 **Q. For that particular year. And then it**
10 **goes on to the next year?**

11 A. Correct. To be clear, that software works
12 in 12-month periods. And we use it in all different
13 contexts, so a year is the last 12 months. So it
14 might be -- in this case, I forget the actual
15 bankruptcy filing date, but it's not going to
16 correspond to a calendar year. It's going to look at
17 things in 12-month increments.

18 **Q. And is this a piece of software that your**
19 **company has done itself?**

20 A. Yes.

21 **Q. Have you ever testified based on numbers**
22 **generated by that software in any prior lawsuit?**

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1 A. I have not. Dr. Bates has.

2 **Q. When you come up with the 60 to 90 million**
3 **number, how many years into the future was that**
4 **estimate covering?**

5 A. I forget at this point whether it's
6 running through 2050 or 2060. But the distinction
7 really isn't very material because the amount of
8 nominal expenditure between 2050 and 2060 would be
9 extremely small.

10 **Q. But it was through 2050 or 2060?**

11 A. It goes out at least 40 years. That's a
12 parameter can you put in the model is how far out you
13 want it to run.

14 **Q. And what interest or inflation rate were**
15 **you using on the settlement numbers?**

16 A. That's something that could vary because
17 it's an input. I was generally looking at things on
18 the order of 2.5 percent per year.

19 **Q. Starting in year one or year two?**

20 A. Starting in year one.

21 **Q. And so the 60 to 90 million numbers**
22 **included a 2.5 percent inflation rate? Is that what**

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1 **you're saying?**

2 A. Correct. So, and there is one thing you
3 need just because if you look at the data, you
4 wouldn't see it exactly that way. There is eight
5 specific settlement values are inflated at 2.5
6 percent a year. The software will also control for
7 the age distribution of claimants through time. And
8 since the typical claimant gets older through time
9 the realized average settlement value grows more
10 slowly than that. The average claimant is older and
11 that partially offsets some of that. So if you just
12 look at the averaged realized settlement values, you
13 won't see 2.5 percent growth. You'll see something
14 slower because it's inclusive of the aging population
15 effect.

16 **Q. Paragraph 17, you take nominal values and**
17 **you take net present values.**

18 A. Yes.

19 **Q. What discount rate did you apply to get**
20 **there?**

21 A. I believe that was at 4.5 percent. Might
22 have been four and a quarter. Might have to go back

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1 and check.

2 **Q. In paragraph 18, there is a sentence in**
3 **the middle that reads, ship related occupational**
4 **exposure in the U.S. is concentrated most earlier in**
5 **time to occupational asbestos from other major**
6 **sources such as construction. What's the basis for**
7 **your statement?**

8 A. Both -- this is actually fairly well
9 documented in the epidemiological literature.
10 Shipyards and ship has a very large spike in exposure
11 associated with World War II and that generated a
12 high incidence of mesothelioma coming out of that
13 relative to shipbuilding and ships subsequent to
14 World War II. So they are loaded in the earlier
15 years.

16 The most salient fact in terms of general
17 construction is it was very depressed in World War II
18 principally because of the war, but as you come out,
19 you enter a construction boom. So just the number of
20 people doing construction greatly expands while the
21 number of people in ship related work declines.
22 That's just in all the labor statistics data, but the

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1 exposure in construction went up with the advent of
2 spray on high temp insulation products. And that's
3 if you go back to Dr. Nicholson even in 1982 in his
4 paper, he points out the increased rate of exposure
5 and his original models gives a big kick to the
6 intensity of exposure of construction workers in the
7 '60s due to the advent of spray on products.

8 **Q. Can you cite me, as we are here today, to**
9 **any specific piece of literature that relates to ship**
10 **exposure?**

11 A. The easiest thing I can cite you is the
12 U.S. census data, the Bureau of Labor Statistics data
13 which can provide you censuses every 10 years. The
14 Bureau of Labor Statistics allows you to go on for
15 the nine years in between each census that shows the
16 employment levels in the different centers. So that
17 will show you the decline in ship related work and
18 the rise in construction related work.

19 So purely just the timetable, the number
20 of people and when they were working leads to this
21 outcome. The other thing to cite you to the EPA
22 reports on the risk equations which is what goes into

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1 the incidence model. So this would be when you get
2 this outcome in Nicholson's modeling, you get this
3 under the KPMG modeling, under the Bates White
4 modeling. There is nothing particularly involved
5 about this statement.

6 There is also largely an amount of
7 literature on job exposure matrices that I didn't
8 cite here on industrial hygiene which goes through
9 and documents the relative exposure levels to
10 asbestos fibers in different industry and
11 occupational settings, and that provides the basis
12 for how much exposure was occurring during different
13 points in time at different industries. That's a
14 large body of literature. It's not one large
15 article.

16 **Q. In paragraph nine, I'm sorry, 29, you**
17 **address opinions concerning the situation if, you**
18 **know, if "had Leslie remained in the tort system", is**
19 **that right?**

20 A. You're starting with the second sentence.

21 **Q. First and second sentence. Third**
22 **sentence. They all talk about Leslie remaining in**

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1 **the tort system, right?**

2 A. Yes.

3 **Q. As part of your work, did you do any**
4 **analysis of Leslie's financial ability to remain in**
5 **the tort system at the time of its bankruptcy filing?**

6 A. I did not.

7 MR. WYNER: I have no further questions.

8 (The proceedings concluded at 3:30 p.m.)

9

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CERTIFICATION

I, SUSAN L. CIMINELLI, a Certified Shorthand
Reporter and Notary Public of the District of
Columbia, do hereby certify that prior to the
commencement of the examination the witness was sworn
by me to testify as to the truth, the whole truth,
and nothing but the truth.

I do further certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I do further certify that I am neither of
counsel nor attorney for any party in this action and
that I am not interested in the event nor outcome of
this litigation.



Jane Rose Reporting

Susan L. Ciminelli

Notary Public in and for the District of
Columbia

Dated:

My commission expires: 11/30/2011

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1 ACKNOWLEDGMENT OF DEPONENT

2 I, CHARLES MULLIN, PH.D.,

3 do hereby certify that I have read

4 the foregoing pages and that the same is a

correct transcription of the answers given

5 by me to the questions therein propounded,

except for the corrections or changes in form or

6 substance, if any, noted in the attached Errata

7 Sheet.

8

9 _____
CHARLES MULLIN

10 Signed this day of , 2010.

11

12 ERRATA

13 PAGE LINE CHANGE REASON THEREFOR

14

15

16

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1 NOTICE TO READ AND SIGN

2

3 A copy of this deposition transcript is being
4 provided to counsel for the witness by JANE ROSE
5 REPORTING for signature.

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In Re Leslie Controls

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